



STORAGE NAME: h6507b.JDC

DATE: 2/28/2020

February 28, 2020

SPECIAL MASTER'S FINAL REPORT

The Honorable Jose R. Oliva
Speaker, The Florida House of Representatives
Suite 420, The Capitol
Tallahassee, Florida 32399-1300

Re: CS/HB 6507 - Representative Daniels and others
Relief/Clifford Williams/State of Florida

THIS IS AN EQUITABLE CLAIM FOR \$2,150,000 TO COMPENSATE CLIFFORD WILLIAMS FOR NEARLY 43 YEARS OF WRONGFUL INCARCERATION.

FINDINGS OF FACT:

In 1976, 34-year-old Clifford Williams ("Claimant") and his nephew, 18-year-old Hubert Nathan Myers, were convicted of the murder of Jeanette Williams,¹ the attempted murder of Nina Marshall, and burglary. In turn, they were sentenced to prison and incarcerated for nearly 43 years.

On May 2, 1976, at about 1:30 a.m., Jeanette Williams and her girlfriend, Nina Marshall, were shot while asleep in bed. Ms. Williams died instantly, but Ms. Marshall survived. She stumbled out of her apartment, flagged down a passing car, and went to the hospital, where she identified her assailants as Claimant and Mr. Myers.

Claimant and Mr. Myers maintained their innocence, stating that they were at the birthday party of a Rachael Jones at the time of the shooting, just down the street. After the police arrived, Claimant and Mr. Myers were among a group of onlookers who

¹ Jeanette Williams was not related to Claimant.

came down the street near the crime scene. Many of the attendants at the birthday party confirmed that Claimant and Mr. Myers were at the party when gunfire was heard. Despite their alibis and based solely on Ms. Marshall's identifying statement, Claimant and Mr. Myers were arrested less than two hours after the shooting.

PROCEDURAL HISTORY:

Conviction and Sentencing

Two months after being arrested, Claimant and Mr. Myers were jointly tried, resulting in a mistrial from an error. During the retrial, the State offered Mr. Myers five years in prison in exchange for testimony against his uncle, the Claimant. Then-18-year-old Myers, who had never been convicted of a felony and who was facing the death penalty, rejected the State's offer. Both men were subsequently convicted, following a two-day trial.

The jury recommended life imprisonment for both defendants, but the trial judge overrode the jury's recommendation and sentenced Claimant to death. On appeal, the Florida Supreme Court reduced Claimant's death sentence to a life sentence, finding no aggravating factors.² As a result, both Claimant and Mr. Myers were ultimately given life sentences.

State Attorney's Conviction Integrity Unit

In 2007, prosecutors' offices around the country began developing conviction integrity units to review claims of wrongful conviction. In January 2018, Melissa Nelson, the State Attorney for Florida's Fourth Judicial Circuit, created Florida's first conviction integrity review unit.

The Conviction Integrity Review Division (CIR) within the State Attorney's Office investigates claims of actual innocence, providing analysis and assistance to prevent errors leading to injustice. The CIR investigates claims arising from felony convictions that are capable of being substantiated by credible, factual information or evidence not considered by the original factfinder.

A person claiming wrongful incarceration may file with the CIR a petition, which is reviewed by the division director and an investigator. If the petition meets applicable criteria, the CIR opens an investigation, which may involve:

- A review of agency files or other relevant documents;
- A review of legal briefs and transcripts;
- Witness interviews;
- Obtaining sworn statements; and
- Submission of evidence for testing or retesting.

² *Williams v. State*, 386 So. 2d 538 (Fla. 1980).

After the CIR concludes its independent review and investigation, it submits its report and recommendation to an Independent Audit Board (IAB) composed of five members of the community. The IAB reviews the CIR's findings to verify that the CIR's recommendation is supported by substantial and credible information. The State Attorney makes the final decision on the matter.³

State Attorney's CIR Investigation into Claimant's Case

On January 17, 2017, Claimant's nephew and co-defendant, Mr. Myers, wrote to the State Attorney's Office, claiming innocence for the crimes involving Ms. Williams and Ms. Marshall. The State Attorney's Office accepted review of the case and began a comprehensive investigation.

The State's investigation led to several discoveries weighing against Claimant's guilt. Specifically, the State's investigation confirmed that:

- Another man—Nathaniel Lawson—admitted to several people that he shot the victims through a window because Ms. Williams had stolen heroin from him; and regretted that Claimant and Mr. Myers were serving time for his own crime.⁴
- Nathaniel Lawson was present at the scene at the time of the shooting.⁵
- Multiple witnesses recalled being with both Claimant and Mr. Myers at the nearby party when shots were heard, indicating that Claimant had a reasonable alibi on the night of the crimes.

The CIR ultimately found significant exculpatory evidence indicating that Claimant and Mr. Myers did not commit the crimes. The State Attorney's CIR report summarized the evidence of Claimant's and Mr. Myers's innocence as follows:

Every investigative step the CIR took corroborated Defendant Myers' claim of innocence, and placed into doubt Ms. Marshall's identification. While no single item of evidence, in and of itself, exonerates Defendant Myers or Defendant Williams, **the culmination of all the evidence, most of which the jury never heard or saw, leaves no abiding confidence in the convictions or the guilt of the defendants.** It is the opinion of the CIR that these men would not be convicted by a jury today if represented by competent counsel who presented all of

³ See Conviction Integrity Investigation, *State v. Myers* and *State v. Williams*, at 1 (Mar. 27, 2019), https://secureservercdn.net/198.71.233.254/9c2.a8b.myftpupload.com/wp-content/uploads/2019/03/CIR_Investigative_Report_FINAL_3.28.19_R.pdf (last visited Feb. 26, 2020).

⁴ Nathaniel Lawson died in 1994; however, the people to whom he made his incriminating admissions are still alive. Conviction Integrity Investigation at 4.

⁵ During the CIR investigation, Claimant offered to take a polygraph test but was unable to complete the test due to diminished cognitive ability. Conviction Integrity Investigation at 4 n.8.

the exculpatory evidence that exists in this case for the jury's consideration.⁶

On March 28, 2019, with the consent of the State,⁷ the circuit court vacated Claimant's convictions and sentences relating to the May 2, 1976, shootings of Jeanette Williams and Nina Marshall.⁸

Wrongful Incarceration Proceedings

Nathan Myers, Claimant's nephew and codefendant, filed a wrongful incarceration petition under chapter 961, F.S. On September 10, 2019, the circuit court granted the petition, finding that Mr. Myers had "met the burden of establishing by clear and convincing evidence" that he did not commit the crimes serving as the basis for his conviction and incarceration.⁹

While Mr. Myers was able to obtain relief under chapter 961, Claimant was ineligible do so because of that chapter's "clean hands provision," which eliminates from consideration any petitioner who, before or during his or her wrongful incarceration, was convicted of two felonies.¹⁰

CLAIMANT'S POSITION:

Claimant asserts that he is actually innocent of the charges and seeks monetary compensation for his time in prison, as well as a tuition waiver for 120 hours of career center or college instruction.

RESPONDENT'S POSITION:

Officially, Respondent neither supports nor opposes the claim bill. However, Claimant's exoneration stems from the Respondent's establishment of the Wrongful Conviction Unit in the State Attorney's Office, which stated, in its official report, that "after review and reinvestigation of the case, evidence, and trial, the State of Florida no longer has confidence in the integrity of the convictions or guilt of the accused."¹¹

CONCLUSIONS OF LAW:

Wrongful Incarceration under Chapter 961

Chapter 961, Florida Statutes, governs the general process for compensating victims of wrongful incarceration. Chapter 961 requires a person claiming to be a victim of wrongful incarceration to prove that he or she is actually innocent of the

⁶ Conviction Integrity Investigation at 4 (emphasis added).

⁷ See Office of the State Attorney for the Fourth Judicial Circuit, *Conviction Integrity Review of 1976 Case Leads to Release of Williams, Myers*, <https://www.sao4th.com/conviction-integrity-williams-myers/> (last visited Feb. 26, 2020).

⁸ Duval Co. Case No. 76-CF-000912 (Order Vacating Defendant's Judgment and Sentences) (Mar. 28, 2019).

⁹ Duval Co. Case No. 76-CF-000912 (Order Granting Petition for Wrongful Incarceration) (Sept. 10, 2019). Although the Office of the Attorney General initially refused to authorize a distribution of funds to Mr. Myers, the office reversed itself on February 15, 2020, stating that it would authorize relief. See Andrew Pantazi, *Florida Attorney General Reverses Course, Grants Reparations for Wrongfully Convicted Jacksonville Man*, Florida Times-Union (Feb. 15, 2020), <https://www.jacksonville.com/news/20200215/florida-attorney-general-reverses-course-grants-reparations-for-wrongfully-convicted-jacksonville-man> (last visited Feb. 26, 2020).

¹⁰ S. 961.04(1) and (2), F.S. (prohibiting relief for a person committing a violent felony or more than one non-violent felony).

¹¹ Conviction Integrity Investigation at 1.

crime and meet other criteria, such as not having been previously convicted of multiple felonies.¹²

Here, Claimant has been unable to obtain relief under chapter 961 because he was convicted of two felonies prior to his convictions for the shootings of Ms. Williams and Ms. Marshall. The first was a conviction for attempted arson in 1960, for which he served two years in county jail; and the second was a conviction for robbery in 1966. Even though Claimant is ineligible under the chapter 961 process, the Legislature is not bound by that process and may pass this claim bill regardless of whether Claimant could otherwise obtain relief.

Evidentiary Standard for Victims of Wrongful Incarceration

Generally, a claimant seeking tort damages under a claim bill must prove entitlement to relief by a preponderance of the evidence—that is, more likely than not. When a claimant seeks a claim bill for wrongful incarceration, he or she must demonstrate actual innocence, but the appropriate burden of proof is not well-established.

William Dillon was the first and only person to receive a claim bill for wrongful incarceration since the enactment of chapter 961, F.S. Mr. Dillon argued that the Legislature should apply a "preponderance of the evidence" standard. The Senate Special Master agreed, but the House Special Master applied a "clear and convincing" standard. This standard is an intermediate burden of proof requiring that the evidence is of "such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established."¹³ Applying this more exacting standard, the House Special Master found that Mr. Dillon had proven actual innocence.

Here, the Legislature is not bound by a previous Legislature's application of the clear and convincing standard. Still, the Legislature's previous application of that standard, coupled with the Legislature's requirement of that same standard for every other person claiming to be a victim of wrongful incarceration, demonstrates that this standard is appropriate for wrongful incarceration cases.¹⁴

Because the Legislature has demonstrated an intent to hold persons claiming to be victims of wrongful incarceration to this higher evidentiary standard, I find that the clear and convincing

¹² See ss. 961.03, 961.04, F.S.

¹³ See *S. Fla. Water Mgmt. Dist. v. RLI Live Oak, LLC*, 139 So. 3d 869, 872 (Fla. 2014).

¹⁴ See s. 961.03(3), F.S. (stating that a victim of wrongful incarceration is entitled to relief if he or she can present "clear and convincing evidence that [he or she] committed neither the act nor the offense that served as the basis for the conviction and incarceration," among other requirements). Moreover, while not dispositive as to legislative intent, it would seem odd to require a person with "clean hands" seeking relief under chapter 961, F.S., to prove his innocence by a clear and convincing standard, while requiring a person not eligible under chapter 961, F.S., to prove his innocence by the lesser preponderance of the evidence standard.

standard should apply, in accordance with House precedent and legislative intent.

Application of Burden of Proof to Claimant's Case

Throughout this process, Claimant has successfully demonstrated his actual innocence by clear and convincing evidence. Specifically, I find the following to be persuasive:

- There are multiple credible alibi witnesses who were not called to testify at trial;
- There is a sworn affidavit stating that Nathaniel Lawson confessed to the crimes before he died;
- Nathaniel Lawson was placed at the scene on the night of the crime;
- Ms. Marshall's testimony has changed throughout the proceedings, demonstrating that she is not a credible witness;
- Ms. Marshall's testimony is rebutted by the scientific and physical evidence in the case;
- There is evidence demonstrating that the gunshots were likely fired from the outside of the apartment, not from the inside as Ms. Marshall testified;
- There was clothing draped over the inside bedroom door, preventing the door from closing, which undercuts Ms. Marshall's testimony that her assailant closed the door after leaving;
- Claimant and his codefendant Mr. Myers have consistently maintained their innocence; and
- Mr. Myers took and passed a polygraph test.

Moreover, I give great weight to the fact that Claimant's innocence came to light through the State's own investigation. The Conviction Integrity Review Division within the State Attorney's Office stated in its official report that "[t]here is no credible evidence of guilt, and likewise, there is credible evidence of innocence"; and recommended a determination that the office has lost faith in the convictions of Claimant and Mr. Myers.¹⁵ In turn, the State Attorney did not oppose Claimant's motion for postconviction relief and has not opposed this claim bill.

I find that Claimant has successfully demonstrated, by clear and convincing evidence, that he is actually innocent of the crimes for which he was convicted in 1976.

Amount of Claim Bill

Claimant seeks a total monetary award of \$2,150,000, which is \$50,000 for each of the 43 years that he was wrongfully incarcerated. While \$50,000 is the appropriate amount for each year of wrongful incarceration under chapter 961, F.S., that

¹⁵ Conviction Integrity Investigation at 44.

chapter also limits the total amount that can be recovered to \$2,000,000.¹⁶ While the Legislature is not limited by chapter 961's cap in this claim bill proceeding, the Legislature may decide that Claimant should not recover more than other similarly-situated petitioners eligible under the normal chapter 961 process.

On the other hand, given that Claimant has lost nearly forty-three years of his most valuable years serving time for a crime he did not commit, the Legislature may decide that the full amount sought is equitable under these particular circumstances.

Exhaustion of Remedies

House Rule 5.6(c) requires a claim bill to be held in abeyance until a claimant has exhausted "all available administrative and judicial remedies. . . ." Here, Claimant has exhausted his remedies under the normal chapter 961 process; however, he currently has a lawsuit pending wherein he claims that the "clean hands" and monetary cap portions of chapter 961 are unconstitutional as applied to him. It is true that if the court agrees and holds those portions of chapter 961 unconstitutional, he will presumably be able to pursue compensation under that revised version of chapter 961. As it now stands, however, Claimant is ineligible for relief under chapter 961. Accordingly, I recommend the Legislature find that he has exhausted his remedies for purposes of Rule 5.6(c).¹⁷

ATTORNEY/ LOBBYING FEES:

Claimant's attorneys are providing representation on a pro bono basis. There are no attorney fees, lobbying fees, or costs associated with this claim bill.

RESPONDENT'S ABILITY TO PAY:

Because any award would presumably come from the General Revenue Fund, it would not affect Respondent's operations.

LEGISLATIVE HISTORY:

This is the first session this bill has been presented to the Legislature.

¹⁶ S. 961.06(1)(a), F.S. ("Monetary compensation for wrongful incarceration [shall] be calculated at a rate of \$50,000 for each year of wrongful incarceration"); s. 961.06(1)(e), F.S. ("The total compensation awarded under [paragraph] (a) . . . may not exceed \$2 million").

¹⁷ Notably, Senate Rule 4.81(6), while including a similar exhaustion of remedies requirement, states that such requirement "does not apply to a bill which relates to a claim of wrongful incarceration."

RECOMMENDATION:

Because Claimant has demonstrated by clear and convincing evidence that he is actually innocent of the crimes for which he was convicted in 1976, I recommend that Committee Substitute for House Bill 6507 be reported **FAVORABLY**.

Respectfully submitted,

A handwritten signature in black ink that reads "W. Jordan Jones". The signature is written in a cursive style with a large, stylized "W" and "J".

JORDAN JONES

House Special Master

cc: Representative Daniels, House Sponsor
Senator Gibson, Senate Sponsor
Christie Letarte, Senate Special Master