

THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION



REPORT TO THE
2009-2010 LONG SESSION OF THE
GENERAL ASSEMBLY
OF NORTH CAROLINA

Pursuant to N.C.G.S. § 15A-1475

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March 12, 2009

TO THE MEMBERS OF THE JOINT LEGISLATIVE CORRECTIONS, CRIME CONTROL,
AND JUVENILE JUSTICE OVERSIGHT COMMITTEE OF THE 2009 SESSION OF THE
GENERAL ASSEMBLY OF NORTH CAROLINA:

The North Carolina Innocence Inquiry Commission herewith submits to you for your
consideration its annual report pursuant to N.C.G.S. § 15A-1475.

Respectfully submitted,

Kendra Montgomery-Blinn
Executive Director
North Carolina Innocence Inquiry Commission

NORTH CAROLINA INNOCENCE INQUIRY COMMISSION MEMBERS 2008-2009

Superior Court Judge / Commission Chairman

The Honorable Quentin T. Sumner, Chairman
Senior Resident Superior Court Judge, 7th Judicial District

The Honorable James L. Baker, Alternate Chairman
Senior Resident Superior Court Judge, 24th Judicial District

Prosecuting Attorney

The Honorable William D. Kenerly, Commissioner
District Attorney, 19th Judicial District

C. Branson Vickory, III, Alternate
District Attorney, 8th Judicial District

Victim Advocate

Mel Laura Chilton, Commissioner
Director, NC Council for Women and Domestic Violence

Ramona Stafford, Alternate
Board of Directors, NC Victim Assistance Network

Criminal Defense Lawyer

Wade M. Smith, Commissioner
Tharrington Smith, LLP

Sean Devereux, Alternate
Devereux & Banzhoff, PLLC

Public Member

Jacqueline Greenlee, Commissioner
Director, Organizational Development at Guilford Technical Community College

Linda Ashendorf, Alternate
Public Affairs Consultant

Sheriff

Ret. Sheriff Barbara Pickens, Commissioner
Retired Sheriff, Lincoln County

Sheriff Sidney A. Causey, Alternate
Sheriff, New Hanover County

Discretionary Member 1

The Honorable Charles Becton, Commissioner
Becton, Slifkin & Bell, P.A., Raleigh

The Honorable Loretta C. Biggs, Alternate
Davis & Harwell, P.A., Winston-Salem

Discretionary Member 2

Chief Heath Jenkins, Commissioner
Chief of Police, Stanley

Representative Richard Glazier, Alternate
North Carolina House of Representatives

Staff

Kendra Montgomery-Blinn, Executive Director

Michael R. Epperly, Staff Attorney

Sharon L. Stellato, Investigator

Grace E. Wallace, Administrative Officer

Juanita Betts, Secretary

PREFACE

The North Carolina Innocence Inquiry Commission (Commission) was established in 2006 by Article 92, Chapter 15A of the North Carolina General Statutes. The Commission is charged with evaluating post-conviction claims of actual innocence. The Commission and its staff carefully review evidence and investigate cases in a non-advocatory, fact-finding manner. N.C.G.S. §15A-1475 requires the Commission to provide an annual report to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee.

ANNUAL REPORT

This annual report to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee is provided pursuant to N.C. G.S. § 15A-1475. This report summarizes the progress that the North Carolina Innocence Inquiry Commission has made in its second year of existence and the Commission's plans for the future. Included are statistics compiled since the Commission's creation and for the year 2008.

I. ACTIVITIES OF THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION IN 2008

The North Carolina Innocence Inquiry Commission completed its second year in 2008. Since the Commission's creation, the innocence claims have been pouring in steadily. The majority of agency creation tasks were completed in 2007 and this allowed the Commission to turn its focus almost exclusively to the cases in 2008.

A. THE CASES

An innocence claim moves through a three-phase process with the Commission. The phases are titled: review, investigation, and hearing. When a new claim is initiated, it is entered into a database and an initial evaluation is made by the executive director to determine if the case meets the statutory criteria set out in N.C.G.S. § 15A-1460(1).

If the claim appears to meet the statutory criteria then it goes into the first phase known as the review phase. The review phase consists of gathering information about the innocence

claim, pulling legal documents, creating a file, and summarizing the facts of the case with supporting documentation.

After the review phase, the executive director determines whether the innocence claim still meets the statutory criteria and should be moved into investigation. At this phase, the convicted person signs the Waiver of Procedural Safeguards and Privileges which triggers the right to counsel pursuant to N.C.G.S. § 15A-1467(b). Investigation is a detailed and lengthy process that involves interviewing witnesses, obtaining affidavits, seeking court orders for evidence, testing of physical evidence, and compiling of documentation. The entire case is comprehensively investigated with every lead followed and every fact rechecked. At any point during the investigation, the case may be rejected if the executive director determines that the case no longer meets the statutory criteria set out in N.C.G.S. § 15A-1460(1). These criteria include: a felony conviction in North Carolina, a claim of complete factual innocence, the existence of credible and verifiable evidence of innocence, and the evidence must not have been previously heard by a jury or judge.

If the investigation is completed and evidence of actual innocence has been uncovered, the case will be moved into the final hearing phase. A hearing will be held before the members of the Commission and all evidence will be presented at this hearing through documentation and witness testimony. The evidence is presented by the Commission staff in a neutral and non-biased fashion. At this hearing, the Commissioners will determine whether to refer the case to a three-judge panel for a final hearing. The final hearing may result in a dismissal of the conviction.

In 2008, the Commission received 207 new claims of innocence. The Commission has received a total of 450 innocence claims since its creation. At the end of 2008, 123 claims were

in the review phase, 295 claims had been rejected, and six cases were in the detailed investigation phase. Two cases moved through hearings and are now closed. Case statistics are included in Appendix A in chart form.

Throughout the process, statistics are maintained for each case. These statistics reflect the types of crimes at issue, the basis of innocence claims submitted, and the reasons for rejection. These statistics have been compiled into pie charts and are included in Appendix B. Further data is available from the Commission's executive director upon request.

B. HEARINGS

North Carolina made legal history in 2008 when the first three-judge panel innocence hearing was held. The case had been heard by the Commission at the end of 2007 and was referred to the Chief Justice for a final hearing before a three-judge panel. The hearing was conducted from August 25 to September 2, 2008 in Nash County with the Honorable Robert Hobgood, the Honorable D. Jack Hooks, and the Honorable Yvonne Mimms Evans presiding. The state was represented by Pitt County District Attorney Clark Everett and Assistant District Attorney Kimberly Robb. The defense was represented by Ernest "Buddy" Conner of Pitt County. The Commission's interest was represented by Executive Director Kendra Montgomery-Blinn.

This hearing was the first of its kind conducted in the nation. The procedures for the hearing were outlined in N.C.G.S. § 15A-1469, but had yet to be tested. The Commission was pleased with the procedural success of this hearing. All of the evidence was presented to the three judges and they were able to deliberate with complete information. The parties understood

the extreme weight of the hearing and collaborated to ensure the efficiency of this hearing. Mr. Reeves received a fair hearing and the judges deliberated with all of the evidence available in this case.

Ultimately, the judges reached the unanimous decision that Mr. Reeves had not proven his innocence by clear and convincing evidence and his conviction was upheld. The opinion of the judges is attached as Appendix C and the Commission's press release is attached as Appendix D. It was the Commission staff's great pleasure to work with such committed and attentive judges and attorneys.

After the hearing, the Honorable Judge Wilton Russell Duke, Senior Resident Superior Court Judge of Pitt County appointed Ernest "Buddy" Conner to continue his representation of Mr. Reeves in order to pursue a Motion for Appropriate Relief and request a new trial. This procedure is outlined in the Commission's enabling legislation at N.C.G.S. § 15A-1470(b) and the Commission staff is available to the parties throughout this process.

The Commission has also recently completed a hearing in the case of State v. Terry Lee McNeil. This hearing was held on January 16, 2009. The Commission will report on this hearing in more detail in the 2009 annual report. The press release from the hearing is attached as Appendix E.

C. OTHER ACCOMPLISHMENTS

Last year, the Commission set goals for 2008 and is pleased to announce that all of those goals have been met. At the end of 2007, the Commission had a backlog of cases that were ready for investigation, but lacked the resources to move these cases forward. The Commission

also set a goal to assume the case review process as an entirely in-house procedure. Prior to this, the North Carolina Center on Actual Innocence was assisting with the case screening process due to the high volume of innocence claims.

The Commission is extraordinarily grateful to the North Carolina General Assembly for granting two additional staff positions in last year's budget. This has brought the Commission staff to five members: an executive director, a staff attorney, an investigator, an administrative officer (who serves as a case manager/office manager), and a secretary. With these additional staff members, the Commission was able to realize all of its 2008 goals.

There is no longer a backlog of cases. All open cases are assigned to a staff member with constant progress. The entire case screening process was assumed by the Commission in the summer of 2008 and is running smoothly. A detailed database has been created for case documentation and progression. A small number of case reviews are assigned to the North Carolina Center on Actual Innocence, but only after cases are first carefully screened by the Commission staff. The North Carolina Center on Actual Innocence completes detailed case reviews with the assistance of law students and professor teams. By allowing law students to work on innocence claims, they gain valuable investigation skills and the resources of the Commission are preserved. The Commission staff carefully screens and limits the student assigned cases.

The additional staff also helped the Commission handle an increased caseload when reviews of guilty plea cases were added to the Commission's duties. North Carolina General Statute § 132-1.4 states that the Commission would begin reviewing cases arising from a guilty plea in November of 2008. With the help of the new staff, the Commission was able to assume

this large new caseload in November. The Commission has now reviewed approximately 90 guilty plea cases and 46 guilty plea cases are currently under review.

The Commission has continued to work with other state agencies and citizen groups throughout North Carolina. The executive director makes frequent presentations to educate others about the Commission and to learn how the Commission can better serve the citizens of North Carolina. In 2008, the Commission's executive director and staff attorney made presentations to the State Judicial Council, the North Carolina District Attorney's Association conference, the North Carolina Police Executives Conference, the Winston-Salem City Council, North Carolina law schools and universities, civic and citizen groups, and provided continuing legal education training at a North Carolina Central Law School symposium.

The accomplishments of 2008 could not have been achieved without the additional staff member positions that were granted by the General Assembly. The Commission is grateful for this assistance and is confident that the best possible use has been made of these new positions. Managing the high volume of innocence claims has become a reality and the Commission is proud of their progress.

II. THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION

PLANS FOR 2009

In 2009, the North Carolina Innocence Inquiry Commission plans to continue to focus on reviewing innocence claims in the most detailed and efficient manner possible. The Commission was pleased with the progress made last year and is prepared to continue with the high volume of case reviews. The Commission expects to conduct another hearing at the end of spring.

The Commission plans to reclassify the case categories in order to bring the language more closely in line with that used in our enabling statute. This will allow for more detailed and accurate statistics. Once this is completed, an audit of all cases will be conducted to reclassify each case. Regular audits will then be conducted to be certain that the high rate of efficiency of claim review process is maintained and to ensure that no case stagnates in any phase.

The Commission remains available to assist other state agencies and will continue to provide education and presentations throughout the state. The Commission has closely followed the progress of the new statutes governing preservation of physical evidence and is prepared to participate in the creation of guidelines. The United States Supreme Court is currently deciding whether a convicted person claiming actual innocence has a right to DNA testing. If the Court determines that such a right exists, the Commission is prepared to assist North Carolina with meeting this task.

CONCLUSION

The members and staff of the North Carolina Innocence Inquiry Commission would like to thank the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee and the General Assembly for their creation and support of this groundbreaking new part of the criminal justice system. North Carolina continues to pave the way for other states and the Commission's executive director has been contacted by other states as they create their own Innocence Inquiry Commissions modeled after our own.

APPENDIX A
CASE STATISTICS

**North Carolina Innocence Inquiry Commission
Case Statistics**

Statistics compiled on 12/31/2008

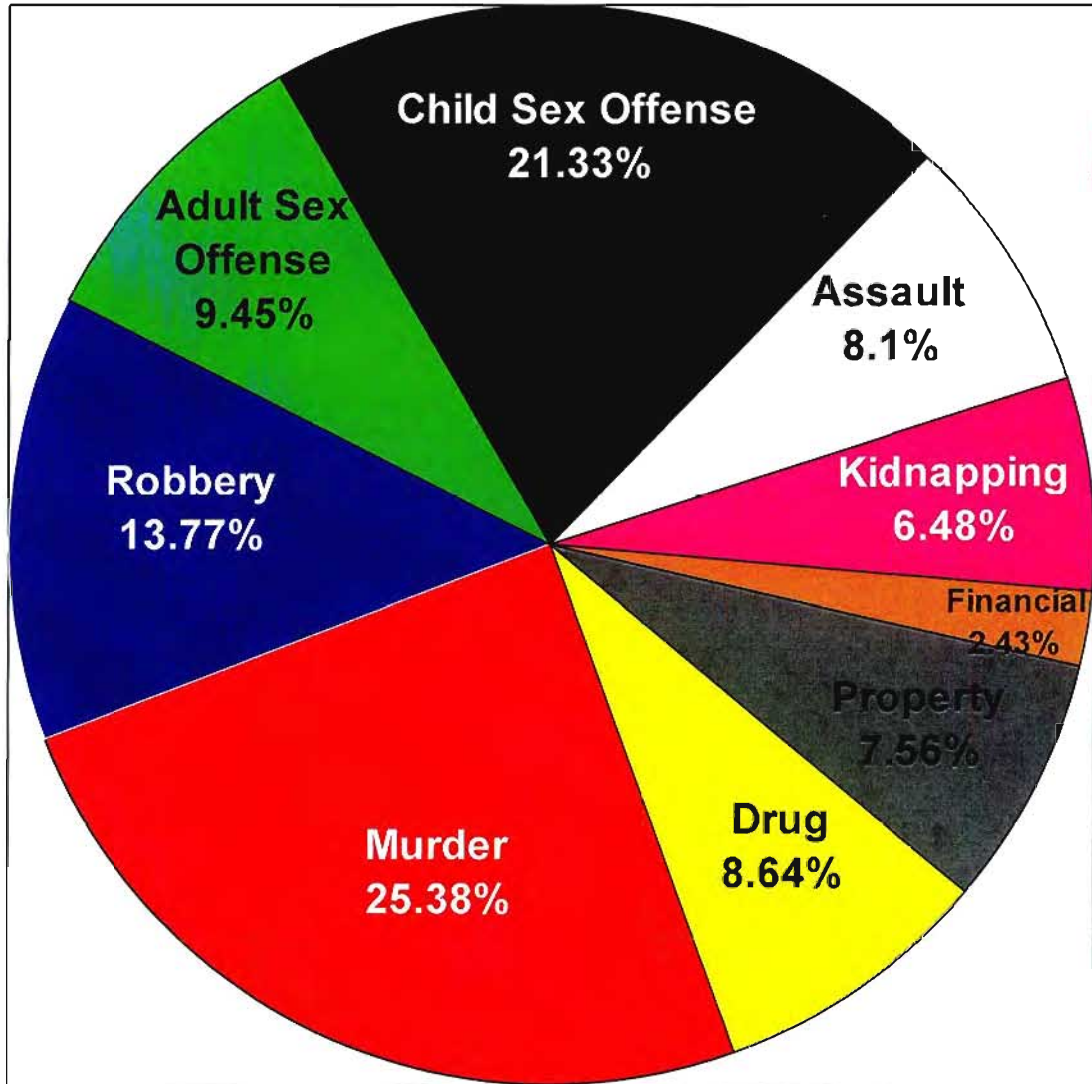
Total Number of Cases	450*
Number of Cases in Review	122
Number of Cases Rejected (after Review or Investigation)	295
Number of Cases that went through Active Investigation in 2008	6
Number of Cases that went through Hearing in 2008	2
Number of non-innocence claims (referred to other agencies)	25

* These statistics reflect all claims made to the North Carolina Innocence Inquiry Commission since its creation in 2007. In 2008, the Commission received 207 new innocence claims.

APPENDIX B

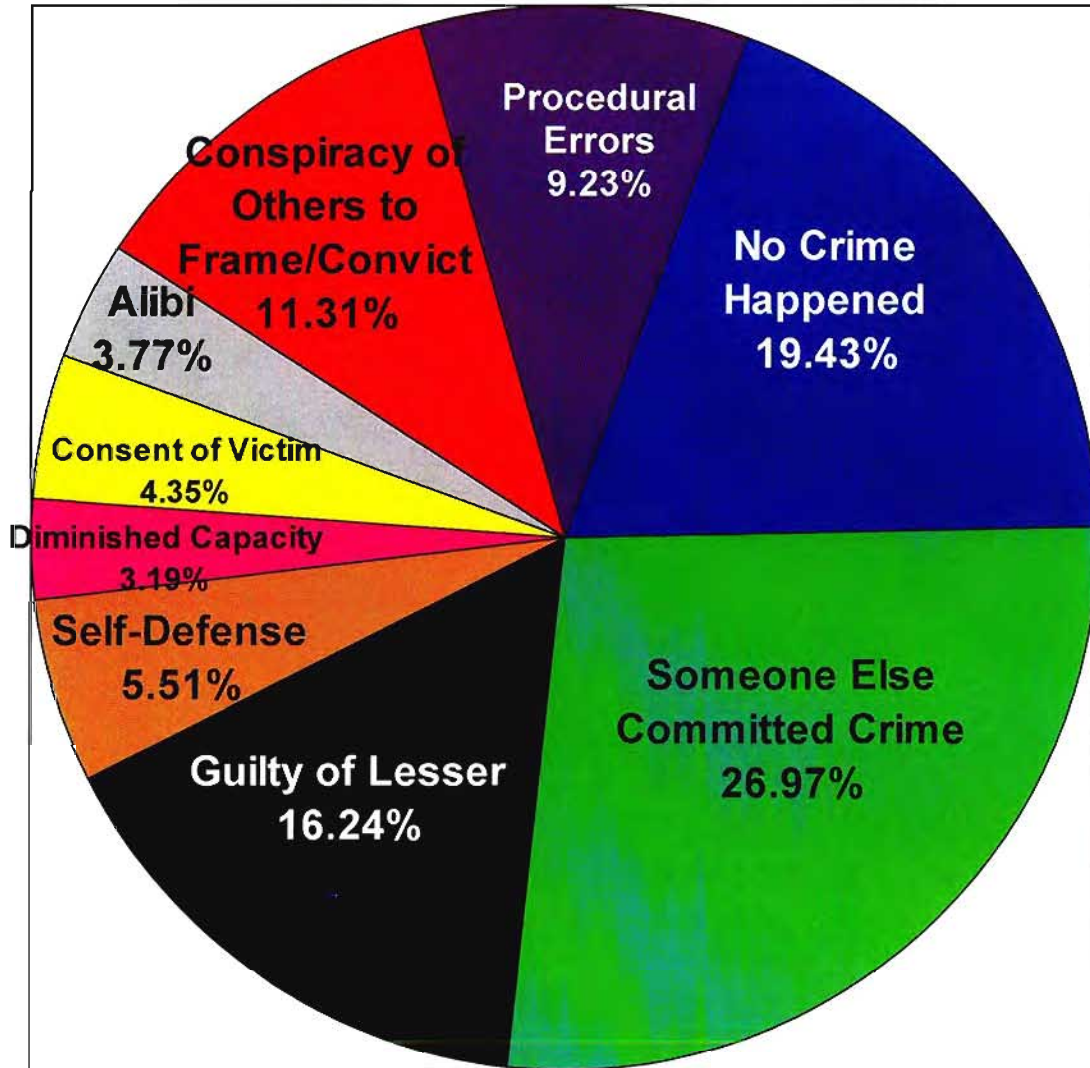
CASE STATISTICS IN PIE CHARTS

**North Carolina Innocence Inquiry Commission
Applicant's Convictions**



- Some applicants were convicted of multiple offenses.
- Data pulled from 382 cases total.

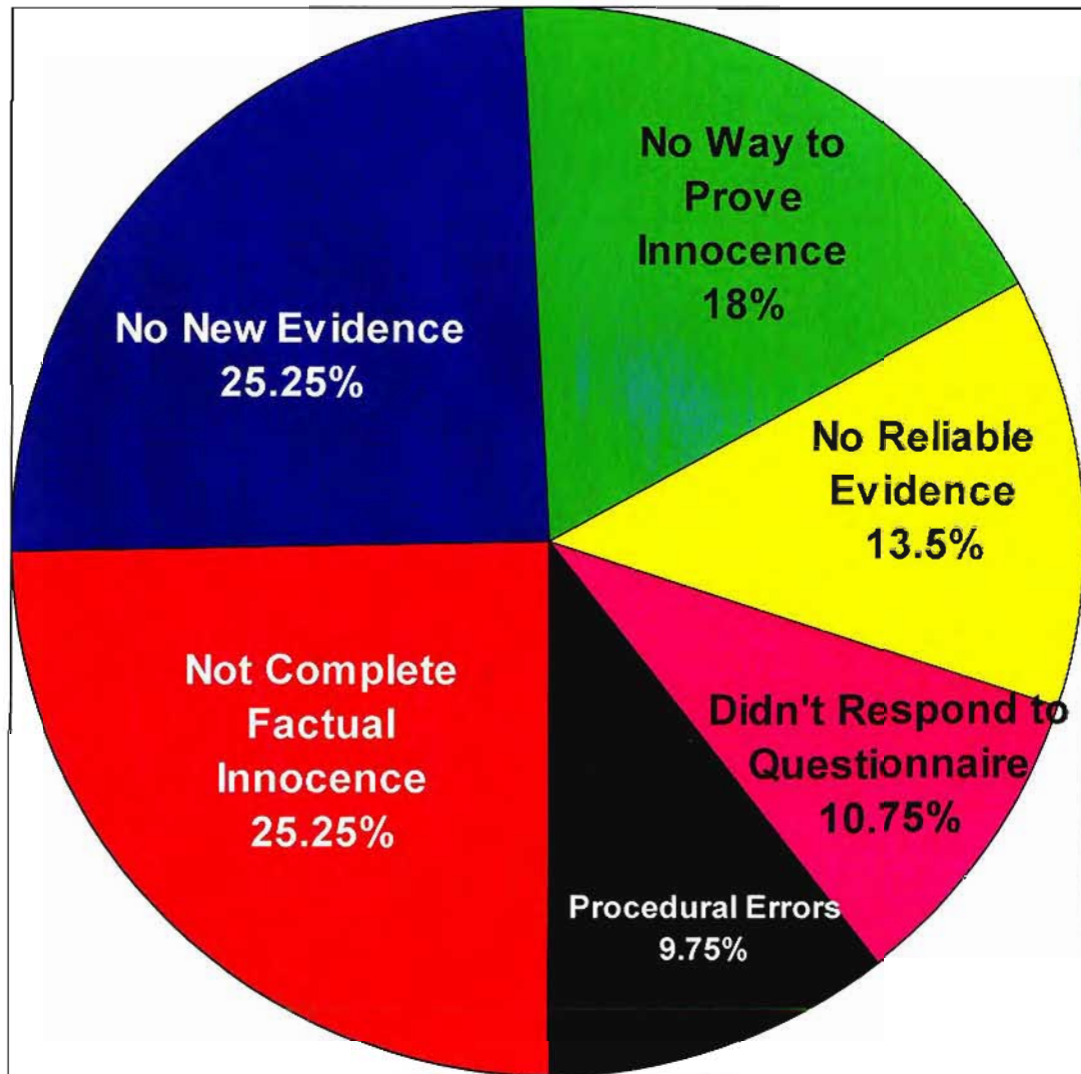
Applicants' Innocence Claims to the North Carolina Innocence Inquiry Commission



- Some applicants made multiple innocence claims.
- Data pulled from 348 cases. In some applications, no specific innocence claim was made.

It is important to note that several of these categories do not fit the statutory requirement for actual innocence and resulted in automatic rejection. A claim that a convicted person is guilty of a lesser offense, acted in self-defense, or acted with a diminished capacity is not a claim of actual innocence and will be rejected.

Reasons for Claim Rejection by the North Carolina Innocence Inquiry Commission



- Some cases were rejected for multiple reasons.
- Data pulled from all 295 rejected cases.
- Data reflects cases rejected during review or investigation. Two cases were closed after hearings.

APPENDIX C

OPINION OF THE THREE-JUDGE PANEL IN STATE V. REEVES

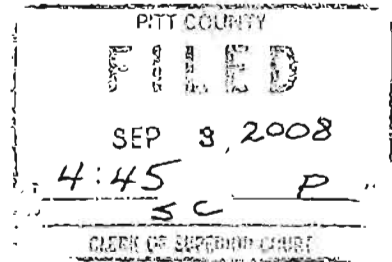
NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

PITT COUNTY

SUPERIOR COURT DIVISION

FILE NO. 99 CRS 65056



STATE OF NORTH CAROLINA

v.

ORDER

HENRY ARCHIE REEVES, III,
Defendant

THIS HEARING was conducted pursuant to Gen. Stat. 15A-1469 by a panel of three Superior Court Judges appointed and commissioned by the Chief Justice of the North Carolina Supreme Court. The State was represented by District Attorney W. Clark Everett and Assistant District Attorney Kimberly Robb. The Defendant was personally present and was represented by Ernest L. Conner, Jr., Attorney at Law, assisted by Melissa Conner, under the third year practice rule. The Court received evidence from the Defendant and the State.

The panel unanimously concludes that the convicted person, Henry Archie Reeves, III, has failed to prove by clear and convincing evidence that he is innocent of the charge. **WHEREFORE, IT IS ORDERED**, that the relief requested is denied.

This the 3rd day of September 2008.

Robert H. Hobgood

ROBERT H. HOBGOOD
Sr. Resident Superior Court Judge
9th Judicial District

Yvonne Mims Evans

YVONNE MIMS EVANS
Regular Resident Superior Court Judge
26th Judicial District

D. Jack Hooks, Jr.

D. JACK HOOKS, JR.
Special Superior Court Judge

A TRUE COPY

CLERK OF SUPERIOR COURT
PITT COUNTY

BY *Susan S. Clark*
Assistant Deputy Clerk Superior Court

APPENDIX D

PRESS RELEASE FOR STATE V. REEVES

News Release

For release: Wednesday September 3, 2008

From the North Carolina Innocence Inquiry Commission
Kendra Montgomery-Blinn, Executive Director

Man's Conviction upheld in Innocence Hearing

Innocence Inquiry Commission Three-Judge Panel makes legal history

GREENVILLE, NC - Legal history was made in Greenville, North Carolina Wednesday when an Innocence Inquiry Commission hearing drew to a close. Three judges ruled that a 2001 conviction against Henry Archie Reeves III would remain untouched. This hearing was the first of its kind in the United States. The North Carolina Innocence Inquiry Commission began investigation of the case in 2007 and last December voted to refer the case to a three-judge panel for a final hearing.

In 2001, Henry Reeves was convicted of taking indecent liberties with his six year-old daughter. Reeves lost his job as a police officer and was incarcerated for 20 months following the trial. He was released in 2003, but is now back in custody accused of failing to update his sex offender registry in Georgia.

The three-judge panel convened last week in Greenville and listened to testimony that the jury never heard at trial. In making their ruling, Judge Robert Hobgood from Franklin County, Judge D. Jack Hooks from Bladen County, and Judge Yvonne Mimms Evans from Mecklenburg County ruled that the conviction would stand. While issuing the panel's opinion, Judge Hobgood stated, "The panel unanimously concludes that the convicted person, Henry Archie Reeves, III, has failed to prove by clear and convincing evidence that he is innocent of the charge"

The Court's ruling may not be appealed.

Mr. Reeves was represented by Ernest L. Conner, Jr., a Greenville attorney who has worked on other high profile innocence cases. The defense presented evidence that the abuse never happened and that the victim was coached by her grandmother to make up the allegations. The victim, who is now 15 years-old, took the stand to declare that her father never molested her and that her grandmother made her lie about it years ago. The victim's three brothers also testified that they heard the grandmother prepping the child in 1999. Other witnesses testified about the poor legal representation that Mr. Reeves had at trial and problems with the DSS investigation. Mr. Reeves ultimately took the stand and proclaimed his innocence.

The state was represented by District Attorney Clark Everett and Assistant District Attorney Kimberly Robb. The state presented evidence that the victim had made consistent disclosures of abuse from 1999-2001. They also focused evidence on the fact that Mr. Reeves had practiced bigamy by being married to two women at the same time.

The Innocence Inquiry Commission's Executive Director, Kendra Montgomery-Blinn commented, "The parties should be commended for the way they handled this case. They made sure the judges heard every piece of evidence and not a single objection was made during the entire hearing. It was a pleasure working with Mr. Everett, Ms. Robb, and Mr. Conner."

The Innocence Inquiry Commission was established in 2006 by the General Assembly as a means to investigate post-conviction claims of actual innocence. The Commission consists of eight members, all of whom were appointed by either the Chief Justice of the North Carolina Supreme Court or the Chief Judge of the Court of Appeals. The Commission members include Judge Quentin T. Sumner (Superior Court Judge), William Kenerly (District Attorney), Wade Smith (Defense Attorney), Mel Laura Chilton (Victim's Advocate), Barbara Pickens (Retired Sheriff), Jacqueline Greenlee (Public Member), Charles Becton (Attorney), and Heath Jenkins (Police Chief).

North Carolina is the first state to create this type of Innocence Inquiry Commission, although other states have proposed similar legislation. A three-judge panel is the final phase of Commission proceedings. Montgomery-Blinn said, "This is one for the history books. The Commission is proud of the work they have done and this hearing has been fair and thorough." The Innocence Inquiry Commission does not represent convicted people, but evaluates new evidence of innocence. Since 2007, the Commission has received over 300 applications and has

accepted only five of those cases for investigation. This case was the first to make it to the final hearing phase.

For more information, please contact the Commission's Executive Director, Kendra Montgomery-Blinn, at (919) 890-1580. More information about the Commission is available at: www.innocencecommission-nc.gov

Ms. Montgomery-Blinn is unable to comment on the facts of the case, but all of the documents that the Commission used to reach their decision are available to the media. This hearing was held in open court and the media may order a copy of the transcript.

APPENDIX E

PRESS RELEASE FOR STATE V. MCNEIL

News Release

For release: Friday, January 16, 2009

From the North Carolina Innocence Inquiry Commission
Kendra Montgomery-Blinn, Executive Director

Hearing Concludes Without Finding of Innocence

Innocence Inquiry Commission conducts
closed hearing in Wake County case

RALEIGH, NC – The North Carolina Innocence Inquiry convened on Friday to conduct a closed hearing in the case of State. v. Terry Lee McNeil. Terry McNeil was convicted in 2001 of Armed Robbery and Second Degree Kidnapping for robbing a dry-cleaners in Apex at gunpoint. Mr. McNeil has always maintained his innocence, claiming that he was misidentified by the victim in a photographic lineup.

The Commission unanimously voted against referring the case to a three-judge panel for a final exoneration hearing. At the close of the hearing, the Commission made eleven findings of fact, including findings that there was significant DNA and other evidence presented, but it did not provide sufficient evidence of factual innocence to merit judicial review.

The Innocence Inquiry Commission was established in 2006 by the General Assembly as a means to investigate post-conviction claims of actual innocence. The Commission consists of eight members, all of whom were appointed by either the Chief Justice of the North Carolina Supreme Court or the Chief Judge of the Court of Appeals. The Commission members include Judge Quentin T. Sumner (Superior Court Judge), William Kenerly (District Attorney), Wade Smith (Defense Attorney), Mel Laura Chilton (Victim's Advocate), Barbara Pickens (Retired Sheriff), Jacqueline Greenlee (Public Member), Charles Becton (Attorney), and Heath Jenkins (Police Chief).

North Carolina is the first state to create this type of Innocence Inquiry Commission, although other states have proposed similar legislation. The Commission does not represent convicted people, but evaluates new evidence of innocence. Since 2007, the Commission has received over 300 applications and has accepted five of those cases for investigation.

Wade Smith, a member of the Commission and a prominent Raleigh attorney, commented: "This was a remarkable effort by the North Carolina Innocence Inquiry Commission and especially by the Commission's staff. The work was very thorough, and the presentations were very impressive. I am proud of this Commission and its work. North Carolina is fortunate that so many people are dedicated to trying to ensure that truly innocent people are not in North Carolina's prisons. The Commission is made up of many points of view, including law

enforcement, victim's advocates, and defense counsel; all of whom ensure that every point of view is represented."

Commission member Retired Sheriff Barbara Pickens noted that the Commission, "spent a year and a half evaluating, investigating, conducting scientific tests, and interviewing numerous witnesses for this case." Commission Chairman, Senior Resident Superior Court Judge, Quentin T. Sumner praised the Commission staff for doing an "outstanding job investigating this case."

For more information, please contact the Commission's Executive Director, Kendra Montgomery-Blinn, at (919) 890-1580. Ms. Montgomery-Blinn is unable to comment on the facts of the case, but will be happy to discuss Commission procedures and statistics. More information about the Commission is available at: www.innocencecommission-nc.gov.

APPENDIX F

THE STATUTE CREATING THE NORTH CAROLINA
INNOCENCE INQUIRY COMMISSION

Article 92.

North Carolina Innocence Inquiry Commission.

§ 15A-1460. Definitions.

The following definitions apply in this Article:

- (1) "Claim of factual innocence" means a claim on behalf of a living person convicted of a felony in the General Court of Justice of the State of North Carolina, asserting the complete innocence of any criminal responsibility for the felony for which the person was convicted and for any other reduced level of criminal responsibility relating to the crime, and for which there is some credible, verifiable evidence of innocence that has not previously been presented at trial or considered at a hearing granted through postconviction relief.
- (2) "Commission" means the North Carolina Innocence Inquiry Commission established by this Article.
- (3) "Director" means the Director of the North Carolina Innocence Inquiry Commission.
- (4) "Victim" means the victim of the crime, or if the victim of the crime is deceased, the next of kin of the victim. (2006-184, s. 1.)

§ 15A-1461. Purpose of Article.

This Article establishes an extraordinary procedure to investigate and determine credible claims of factual innocence that shall require an individual to voluntarily waive rights and privileges as described in this Article. (2006-184, s. 1.)

§ 15A-1462. Commission established.

(a) There is established the North Carolina Innocence Inquiry Commission. The North Carolina Innocence Inquiry Commission shall be an independent commission under the Judicial Department for administrative purposes.

(b) The Administrative Office of the Courts shall provide administrative support to the Commission as needed. The Director of the Administrative Office of the Courts shall not reduce or modify the budget of the Commission or use funds appropriated to the Commission without the approval of the Commission. (2006-184, s. 1.)

§ 15A-1463. Membership; chair; meetings; quorum.

- (a) The Commission shall consist of eight voting members as follows:
 - (1) One shall be a superior court judge.
 - (2) One shall be a prosecuting attorney.

- (3) One shall be a victim advocate.
- (4) One shall be engaged in the practice of criminal defense law.
- (5) One shall be a public member who is not an attorney and who is not an officer or employee of the Judicial Department.
- (6) One shall be a sheriff holding office at the time of his or her appointment.
- (7) The vocations of the two remaining appointed voting members shall be at the discretion of the Chief Justice.

The Chief Justice of the North Carolina Supreme Court shall make the initial appointment for members identified in subdivisions (4) through (6) of this subsection. The Chief Judge of the Court of Appeals shall make the initial appointment for members identified in subdivisions (1) through (3) of this subsection. After an appointee has served his or her first three-year term, the subsequent appointment shall be by the Chief Justice or Chief Judge who did not make the previous appointment. Thereafter, the Chief Justice or Chief Judge shall rotate the appointing power, except for the two discretionary appointments identified by subdivision (7) of this subsection which shall be appointed by the Chief Justice.

(b) The appointing authority shall also appoint alternate Commission members for the Commission members he or she has appointed to serve in the event of scheduling conflicts, conflicts of interest, disability, or other disqualification arising in a particular case. The alternate members shall have the same qualifications for appointment as the original member. In making the appointments, the appointing authority shall make a good faith effort to appoint members with different perspectives of the justice system. The appointing authority shall also consider geographical location, gender, and racial diversity in making the appointments.

(c) The superior court judge who is appointed as a member under subsection (a) of this section shall serve as Chair of the Commission. The Commission shall have its initial meeting no later than January 31, 2007, at the call of the Chair. The Commission shall meet a minimum of once every six months and may also meet more often at the call of the Chair. The Commission shall meet at such time and place as designated by the Chair. Notice of the meetings shall be given at such time and manner as provided by the rules of the Commission. A majority of the members shall constitute a quorum. All Commission votes shall be by majority vote. (2006-184, s. 1.)

§ 15A-1464. Terms of members; compensation; expenses.

(a) Of the initial members, two appointments shall be for one-year terms, three appointments shall be for two-year terms, and three appointments shall be for three-year terms. Thereafter, all terms shall be for three years. Members of the Commission shall serve no more than two consecutive three-year terms plus any initial term of less than three years. Unless provided otherwise by this act, all terms of members shall begin on January 1 and end on December 31.

Members serving by virtue of elective or appointive office, except for the sheriff, may serve only so long as the officeholders hold those respective offices. The Chief Justice

may remove members, with cause. Vacancies occurring before the expiration of a term shall be filled in the manner provided for the members first appointed.

(b) The Commission members shall receive no salary for serving. All Commission members shall receive necessary subsistence and travel expenses in accordance with the provisions of G.S. 138-5 and G.S. 138-6, as applicable. (2006-184, s. 1.)

§ 15A-1465. Director and other staff.

(a) The Commission shall employ a Director. The Director shall be an attorney licensed to practice in North Carolina at the time of appointment and at all times during service as Director. The Director shall assist the Commission in developing rules and standards for cases accepted for review, coordinate investigation of cases accepted for review, maintain records for all case investigations, prepare reports outlining Commission investigations and recommendations to the trial court, and apply for and accept on behalf of the Commission any funds that may become available from government grants, private gifts, donations, or bequests from any source.

(b) Subject to the approval of the Chair, the Director shall employ such other staff and shall contract for services as is necessary to assist the Commission in the performance of its duties, and as funds permit.

(c) The Commission may, with the approval of the Legislative Services Commission, meet in the State Legislative Building or the Legislative Office Building, or may meet in an area provided by the Director of the Administrative Office of the Courts. The Director of the Administrative Office of the Courts shall provide office space for the Commission and the Commission staff. (2006-184, s. 1.)

§ 15A-1466. Duties.

The Commission shall have the following duties and powers:

- (1) To establish the criteria and screening process to be used to determine which cases shall be accepted for review.
- (2) To conduct inquiries into claims of factual innocence, with priority to be given to those cases in which the convicted person is currently incarcerated solely for the crime for which he or she claims factual innocence.
- (3) To coordinate the investigation of cases accepted for review.
- (4) To maintain records for all case investigations.
- (5) To prepare written reports outlining Commission investigations and recommendations to the trial court at the completion of each inquiry.
- (6) To apply for and accept any funds that may become available for the Commission's work from government grants, private gifts, donations, or bequests from any source. (2006-184, s. 1.)

§ 15A-1467. Claims of innocence; waiver of convicted person's procedural safeguards and privileges; formal inquiry; notification of the crime victim.

(a) A claim of factual innocence may be referred to the Commission by any court, person, or agency. The Commission shall not consider a claim of factual innocence if the convicted person is deceased. The determination of whether to grant a formal inquiry regarding any other claim of factual innocence is in the discretion of the Commission. The Commission may informally screen and dismiss a case summarily at its discretion.

(b) No formal inquiry into a claim of innocence shall be made by the Commission unless the Director or the Director's designee first obtains a signed agreement from the convicted person in which the convicted person waives his or her procedural safeguards and privileges, agrees to cooperate with the Commission, and agrees to provide full disclosure regarding all inquiry requirements of the Commission. The waiver under this subsection does not apply to matters unrelated to a convicted person's claim of innocence. The convicted person shall have the right to advice of counsel prior to the execution of the agreement and, if a formal inquiry is granted, throughout the formal inquiry. If counsel represents the convicted person, then the convicted person's counsel must be present at the signing of the agreement. If counsel does not represent the convicted person, the Commission Chair shall determine the convicted person's indigency status and, if appropriate, enter an order for the appointment of counsel for the purpose of advising on the agreement.

(c) If a formal inquiry regarding a claim of factual innocence is granted, the Director shall use all due diligence to notify the victim in the case and explain the inquiry process. The Commission shall give the victim notice that the victim has the right to present his or her views and concerns throughout the Commission's investigation.

(d) The Commission may use any measure provided in Chapter 15A of the General Statutes and the Rules of Civil Procedure as set out in G.S. 1A-1 to obtain information necessary to its inquiry. The Commission may also do any of the following: issue process to compel the attendance of witnesses and the production of evidence, administer oaths, petition the Superior Court of Wake County or of the original jurisdiction for enforcement of process or for other relief, and prescribe its own rules of procedure. All challenges with regard to the Commission's authority or the Commission's access to evidence shall be heard by the Commission Chair in the Chair's judicial capacity, including any in camera review required by G.S. 15A-908.

(e) While performing duties for the Commission, the Director or the Director's designee may serve subpoenas or other process issued by the Commission throughout the State in the same manner and with the same effect as an officer authorized to serve process of the General Court of Justice.

(f) All State discovery and disclosure statutes in effect at the time of formal inquiry shall be enforceable as if the convicted person were currently being tried for the charge for which the convicted person is claiming innocence.

(g) If, at any point during an inquiry, the convicted person refuses to comply with requests of the Commission or is otherwise deemed to be uncooperative by the Commission, the Commission shall discontinue the inquiry. (2006-184, s. 1.)

§ 15A-1468. Commission proceedings.

(a) At the completion of a formal inquiry, all relevant evidence shall be presented to the full Commission. As part of its proceedings, the Commission may conduct public hearings. The determination as to whether to conduct public hearings is solely in the discretion of the Commission. Any public hearing held in accordance with this section shall be subject to the Commission's rules of operation.

(b) The Director shall use all due diligence to notify the victim at least 30 days prior to any proceedings of the full Commission held in regard to the victim's case. The Commission shall notify the victim that the victim is permitted to attend proceedings otherwise closed to the public, subject to any limitations imposed by this Article. If the victim plans to attend proceedings otherwise closed to the public, the victim shall notify the Commission at least 10 days in advance of the proceedings of his or her intent to attend. If the Commission determines that the victim's presence may interfere with the investigation, the Commission may close any portion of the proceedings to the victim.

(c) After hearing the evidence, the full Commission shall vote to establish further case disposition as provided by this subsection. All eight voting members of the Commission shall participate in that vote.

Except in cases where the convicted person entered and was convicted on a plea of guilty, if five or more of the eight voting members of the Commission conclude there is sufficient evidence of factual innocence to merit judicial review, the case shall be referred to the senior resident superior court judge in the district of original jurisdiction by filing with the clerk of court the opinion of the Commission with supporting findings of fact, as well as the record in support of such opinion, with service on the district attorney in noncapital cases and service on both the district attorney and Attorney General in capital cases. In cases where the convicted person entered and was convicted on a plea of guilty, if all of the eight voting members of the Commission conclude there is sufficient evidence of factual innocence to merit judicial review, the case shall be referred to the senior resident superior court judge in the district of original jurisdiction.

If less than five of the eight voting members of the Commission, or in cases where the convicted person entered and was convicted on a guilty plea less than all of the eight voting members of the Commission, conclude there is sufficient evidence of factual innocence to merit judicial review, the Commission shall conclude there is insufficient evidence of factual innocence to merit judicial review. The Commission shall document that opinion, along with supporting findings of fact, and file those documents and supporting materials with the clerk of superior court in the district of original jurisdiction, with a copy to the district attorney and the senior resident superior court judge.

The Director of the Commission shall use all due diligence to notify immediately the victim of the Commission's conclusion in a case.

(d) Evidence of criminal acts, professional misconduct, or other wrongdoing disclosed through formal inquiry or Commission proceedings shall be referred to the appropriate authority. Evidence favorable to the convicted person disclosed through formal inquiry or Commission proceedings shall be disclosed to the convicted person and the convicted person's counsel, if the convicted person has counsel.

(e) All proceedings of the Commission shall be recorded and transcribed as part of the record. All Commission member votes shall be recorded in the record. All records and proceedings of the Commission are confidential and are exempt from public record and public meeting laws except that the supporting records for the Commission's conclusion that there is sufficient evidence of factual innocence to merit judicial review, including all files and materials considered by the Commission and a full transcript of the hearing before the Commission, shall become public at the time of referral to the superior court. Commission records for conclusions of insufficient evidence of factual innocence to merit judicial review shall remain confidential, except as provided in subsection (d) of this section. (2006-184, s. 1.)

§ 15A-1469. Postcommission three-judge panel.

(a) If the Commission concludes there is sufficient evidence of factual innocence to merit judicial review, the Chair of the Commission shall request the Chief Justice to appoint a three-judge panel, not to include any trial judge that has had substantial previous involvement in the case, and issue commissions to the members of the three-judge panel to convene a special session of the superior court of the original jurisdiction to hear evidence relevant to the Commission's recommendation. The senior judge of the panel shall preside.

(b) The senior resident superior court judge shall enter an order setting the case for hearing at the special session of superior court for which the three-judge panel is commissioned and shall require the State to file a response to the Commission's opinion within 60 days of the date of the order.

(c) The district attorney of the district of conviction, or the district attorney's designee, shall represent the State at the hearing before the three-judge panel.

(d) The three-judge panel shall conduct an evidentiary hearing. At the hearing, the court may compel the testimony of any witness, including the convicted person. The convicted person may not assert any privilege or prevent a witness from testifying. The convicted person has a right to be present at the evidentiary hearing and to be represented by counsel. A waiver of the right to be present shall be in writing.

(e) The senior resident superior court judge shall determine the convicted person's indigency status and, if appropriate, enter an order for the appointment of counsel. The court may also enter an order relieving an indigent convicted person of all or a portion of the costs of the proceedings.

(f) The clerk of court shall provide written notification to the victim 30 days prior to any case-related hearings.

(g) Upon the motion of either party, the senior judge of the panel may direct the attorneys for the parties to appear before him or her for a conference on any matter in the case.

(h) The three-judge panel shall rule as to whether the convicted person has proved by clear and convincing evidence that the convicted person is innocent of the charges. Such a determination shall require a unanimous vote. If the vote is unanimous, the panel

shall enter dismissal of all or any of the charges. If the vote is not unanimous, the panel shall deny relief. (2006-184, s. 1.)

§ 15A-1470. No right to further review of decision by Commission or three-judge panel; convicted person retains right to other postconviction relief.

(a) Unless otherwise authorized by this Article, the decisions of the Commission and of the three-judge panel are final and are not subject to further review by appeal, certification, writ, motion, or otherwise.

(b) A claim of factual innocence asserted through the Innocence Inquiry Commission shall not adversely affect the convicted person's rights to other postconviction relief. (2006-184, s. 1.)

§ 15A-1471. Reserved for future codification purposes.

§ 15A-1472. Reserved for future codification purposes.

§ 15A-1473. Reserved for future codification purposes.

§ 15A-1474. Reserved for future codification purposes.

§ 15A-1475. Reports.

Beginning January 1, 2008, and annually thereafter, the North Carolina Innocence Inquiry Commission shall report on its activities to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee and the State Judicial Council. The report may contain recommendations of any needed legislative changes related to the activities of the Commission. The report shall recommend the funding needed by the Commission, the district attorneys, and the State Bureau of Investigation in order to meet their responsibilities under S.L. 2006-184. Recommendations concerning the district attorneys or the State Bureau of Investigation shall only be made after consultations with the North Carolina Conference of District Attorneys and the Attorney General. (2006-184, s. 9.)