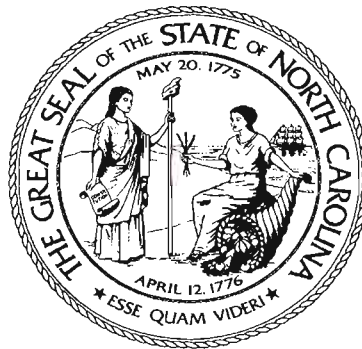


THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION



REPORT TO THE
2011-12 SHORT SESSION OF THE
GENERAL ASSEMBLY
OF NORTH CAROLINA
AND
THE STATE JUDICIAL COUNCIL

Pursuant to N.C.G.S. § 15A-1475 and S.L. 2011-291

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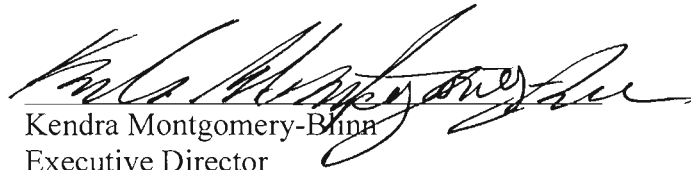
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February 15, 2012

TO THE MEMBERS OF THE JOINT LEGISLATIVE COMMITTEE ON JUSTICE AND
PUBLIC SAFETY OF THE 2011-2012 SHORT SESSION OF THE GENERAL ASSEMBLY
OF NORTH CAROLINA AND THE MEMBERS OF THE STATE JUDICIAL COUNCIL:

The North Carolina Innocence Inquiry Commission herewith submits to you for your
consideration its annual report pursuant to N.C.G.S. § 15A-1475 and S.L. 2011-291.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kendra Montgomery-Blinn", written over a horizontal line.

Kendra Montgomery-Blinn
Executive Director
North Carolina Innocence Inquiry Commission

NORTH CAROLINA INNOCENCE INQUIRY COMMISSION MEMBERS 2011-2012

Superior Court Judge / Commission Chairman

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

The Honorable Forrest D. Bridges, Alternate Chairman
Senior Resident Superior Court Judge, Judicial District 27B

Prosecuting Attorney

The Honorable C. Branson Vickory, III, Commissioner
District Attorney, Judicial District 8

The Honorable Garry Frank
District Attorney, Judicial District 22B

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

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

Linda Ashendorf, Alternate
Public Affairs Consultant

Sheriff

Sheriff Susan Johnson, Commissioner
Sheriff, Currituck County

Sheriff Van Duncan, Alternate
Sheriff, Buncombe County

Discretionary Member 1

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

T. Diane Surgeon, Alternate
The Elder Law Center, Lumberton

Discretionary Member 2

Chief Heath Jenkins, Commissioner
Chief of Police, Stanley

Representative Richard Glazier, Alternate
North Carolina House of Representatives

Staff

Kendra Montgomery-Blinn, J.D., Executive Director

Sharon L. Stellato, J.D., Associate Director

Stormy Ellis, Staff Attorney

Lindsey Guice Smith, Grant Staff Attorney

Jamie T. Lau, Grant Staff Attorney

Adam Wrenn, Case Coordinator

Aschante Pretty, Paralegal

PREFACE

The North Carolina Innocence Inquiry Commission (Commission) was established in 2006 by Article 92 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. North Carolina General Statute §15A-1475 and S.L. 2011-291 require the Commission to provide an annual report to the Joint Legislative Committee on Justice and Public Safety and the State Judicial Council.

ANNUAL REPORT

This annual report to the Joint Legislative Committee on Justice and Public Safety and the State Judicial Council is provided pursuant to G.S. § 15A-1475 and S.L. 2011-291. This report details the activities of the North Carolina Innocence Inquiry Commission in 2011 and the Commission's plans for the future. Included are statistics for the year 2011 as well as the cumulative statistics since the Commission's creation.

I. ACTIVITIES OF THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION IN 2011

This past year was another exciting year for the Commission. In the fall of 2011, the Commission process resulted in a double exoneration. The number of new innocence claims continued to hold steady this past year. The Commission staff was also able to confirm convictions and locate missing evidence in multiple cases.

Since 2010, the Commission has received significant federal funding that is used for DNA testing and two staff attorney positions. Unfortunately, the funding will expire this year and the grant was not renewed. The Commission is continuing to seek alternate sources of funding, but must ask the General Assembly to increase state funding to cover a portion of the lost grant funds so the essential work undertaken on DNA cases may continue.

A. CASES

1. Kenneth Kagonyera and Robert Wilcoxson Exonerations

This past year, the Commission process resulted in a double exoneration for a plea case. This was the first co-defendant exoneration in recent North Carolina history. In 2001 and 2002, Kenneth Kagonyera and Robert Wilcoxson pled guilty to second degree murder, respectively. They were charged with breaking into a home along with four other men in an apparent robbery attempt. One of the men fired a shot at a door. The Victim, Walter Bowman, was standing on the other side of the door and was killed.

The Commission conducted a detailed investigation on this case and uncovered multiple pieces of evidence of innocence. A Crime Stoppers tip, immediately after the homicide, named three men who were never investigated for the crime because one of them was believed to be serving a jail sentence at the time. The Commission's investigation revealed that this individual was only serving his jail sentence on weekends and was not in custody on the day the homicide occurred.

During the original investigation, gloves and bandanas were recovered on the road near the Victim's residence. These items were identified by a survivor as similar to those worn by the perpetrators. DNA testing in 2001, excluded Mr. Kagonyera, Mr. Wilcoxson, as well as the rest of the named co-defendants. This unknown DNA profile was uploaded into the Combined DNA Index System (CODIS) DNA databank. In 2003, after Mr. Kagonyera and Mr. Wilcoxson pled guilty, the unknown DNA profile from one of the bandanas received a hit in the CODIS DNA databank. This DNA hit was to one of the men named in the original Crime Stoppers tip.

Information regarding this 2003 DNA hit was not provided to the defendants. The Commission conducted further DNA testing and confirmed the CODIS hit to be a DNA match. Additional testing also revealed partial DNA profiles that could not exclude the other men named in the original Crime Stoppers tip, but did exclude Mr. Kagonyera, Mr. Wilcoxson, as well as all of the other people charged and convicted.

In 2003, after the plea agreement was entered, one of the men from the original Crime Stoppers tip confessed his involvement in the crime to a federal agent. He named the other two men from the Crime Stoppers tip as his accomplices. The Commission discovered documentation regarding this confession during their investigation and confirmed the details of this confession with the federal agent.

The Commission staff also obtained a copy of a surveillance tape from a gas station close to the Victim's residence. The tape had been viewed by the lead detective in 2000 and he made a note that three black men could be seen walking into the store. Witnesses from the tape described a car that investigators focused on as similar to Kenneth Kagonyera's vehicle. The Commission discovered that the portion of the videotape labeled by the detective had been taped over with an episode of a soap opera that aired in 2000. The Commission was able to enhance the remaining portion of the video tape through the State Bureau of Investigation and obtain multiple still and video images of the vehicle. An expert on American automobiles reviewed the images and determined that the vehicle could only be a 1971 or 1972 Oldsmobile Cutlass Supreme two-door hardtop. This type of vehicle was driven by one of the men named in the original Crime Stoppers tip, not Kenneth Kagonyera.

The Commission's investigation was detailed and lengthy. The results were presented in a formal hearing before the North Carolina Innocence Inquiry Commission on April 28 and 29,

2011. The Commissioners unanimously referred the case forward to a three-judge panel. The three-judge panel convened in Buncombe County and heard evidence from September 12 through 22, 2011. At the conclusion of the hearing, the three judges unanimously ruled that Mr. Kagonyera and Mr. Wilcoxson had proven their innocence and they were exonerated. Both men were released from prison after almost ten years of incarceration

The documents used during the Commission hearing are public record and may be located on the Commission's website at: www.innocencecommission-nc.gov or by contacting the Commission's executive director. The documents from the three-judge panel are available at the Buncombe County Clerk of Court Office. The Commission's opinion and the opinion of the three-judge panel are included in this report as Exhibits A and B.

The evidence in this case would not have been uncovered and revealed without the Commission. Mr. Kagonyera had worked with multiple other agencies seeking assistance with his innocence claim. He had also filed a *pro se* Motion for Appropriate Relief seeking DNA testing. The testing had been ordered, but the order was not carried out. The exonerations brought North Carolina positive national attention that highlighted our state's unique commission process by which innocence claims can be methodically reviewed and investigated.

2. Case Statistics

The number of new claims received by the Commission each year has not decreased. In 2011, the Commission received 266 new claims of actual innocence. The Commission receives an average of 251 claims each year.¹

¹ The Commission received 243 claims in 2007, 207 claims in 2008, 225 claims in 2009, and 314 in 2010.

Since creation, the Commission has received and reviewed 1102 innocence claims. By the end of 2011, 953 claims had been reviewed and closed. The Commission has also handled 164 requests for information that required responses or referrals to other appropriate agencies.

At the end of 2011, 19 claims were in active investigation. An additional six cases were in formal inquiry. Formal inquiry is the phase of review defined by statute, in which the claimant has a right to an attorney as he/she waives his/her procedural safeguards and privileges. The crime victim must also receive notification of the Commission's formal inquiry.

Since the Commission's creation, four cases have moved through Commission hearing. The first case was referred to three-judge panel after a Commission hearing in 2007. The three judges ruled that the claimant had not proven his innocence by clear and convincing evidence. The second case was closed after the Commission's hearing in 2008 without a referral. The third case was that of Greg Taylor and it resulted in exoneration on February 17, 2010. The Fourth case was that of Kenneth Kagonyera and Robert Wilcoxson and resulted in a double exoneration on September 22, 2011.

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

3. Results of Investigations

The Commission measures its accomplishments by more than hearings. The Commission routinely turns over additional evidence of guilt that it uncovers during investigation. In 2011,

the Commission staff was able to confirm two convictions. These cases often continue to arise in court on other grounds and the results of DNA testing may be used in the future, including at parole hearings.

The Commission was able to locate missing evidence in five cases in 2010. In all of these cases, the evidence had been declared missing or destroyed at prior proceedings. In many cases, the evidence was presumed destroyed or lost. As a state agency, the Commission has the authority to request searches for evidence and ultimately to conduct its own searches when necessary. This newly located evidence has been used to confirm convictions, further investigations, and in some cases, is currently undergoing DNA testing.

B. BUDGET REQUEST

In 2009, the National Institute of Justice awarded the Commission a \$566,980 grant to be used exclusively for work on DNA cases. The Commission began utilizing the federal funds in January 2010. The grant funding enabled the Commission to hire two additional grant staff attorneys and conduct more extensive and additional DNA testing. Last year's double exoneration case was investigated and tested under federal grant funds. In many of the pending cases, physical evidence was located by the two grant staff attorneys when it had previously been declared missing or destroyed.

Of the 19 cases in investigation, 10 are being investigated by the grant staff attorneys and three formal inquiry cases have been subjected to DNA testing under the federal grant. The addition of two staff members and federal funds to pay for costly DNA testing and investigation

expenses has aided the Commission significantly. The volume of DNA based cases ready for investigation will outweigh the Commission's state funded resources once the grant funds expire.

The grant funds will expire at the end of 2012 and the Commission has been unable to secure additional federal funding. The available funds from NIJ have decreased by 50 percent and future cuts are expected. The Commission will continue to pursue all outside funding sources, including continuing grant applications, but is seeking state funding to cover some of the high volume of DNA case work that is required. The Commission needs funding to cover expenses associated with DNA testing and to cover one of the two staff attorney positions that will be lost at the end of 2012.

The Commission cannot conduct all of the necessary DNA testing at the North Carolina State Crime Lab (NCSCCL) because the Commission is frequently working with old and degraded physical evidence that requires special DNA testing kits that are not available at the NCSCCL. The Commission regularly uses DNA testing such as YSTR, Mitochondrial testing, and Mini-filer testing that is only available at private labs. The Commission works with private labs to receive government rates and discounted rates, but does not have sufficient funds in the annual state budget to cover all of the DNA testing needed.

The Commission also cannot continue the high volume of work without the two grant staff attorneys that were funded by the federal grant. The federal grant provided money for salaries, benefits, and expenses associated with two staff attorneys and their work. These two staff attorneys have built up a wealth of knowledge and experience in the past two years. They have an active caseload that is reliant on their work. These attorneys have also completed coursework to become certified evidence custodians and maintain a Commission evidence room that complies with all North Carolina laws for preservation and chain of custody.

The state currently funds five permanent Commission positions: An executive director, an associate director, a staff attorney, a case coordinator, and a paralegal. The Commission is asking the state to fund one of the staff attorney positions that will be lost with the federal grant funds.

The Commission is seeking \$50,000 in recurring funds to cover the costs of DNA testing that will no longer be covered by the grant. The Commission is also seeking \$133,359 in recurring funds to cover the salary, benefits, equipment costs, and investigation expenses for one of the two staff attorneys that will be lost when the grant expires. This request is submitted as part of the Administrative Office of the Courts annual budget worksheets. The Commission's expansion budget request is attached as Appendix D.

C. OTHER ACCOMPLISHMENTS

In January 2011, the Commission unveiled a new website with updated information and increased access to documentation. The website was designed by Commission staffer, Stormy Ellis, and can be viewed at: www.innocencecommission-nc.gov or through www.nccourts.org. The Commission has been able to use the website as a means of distributing documents that have become public record and posting updated case statistics. The website contains other pertinent information, such as answers to frequently asked questions, information about how to apply, and links to other agencies.

In the summer of 2011, the Commission's two grant staff attorneys became certified property and evidence specialists. They are members of the International Association of Property and Evidence and passed an exam to become certified specialists. They maintain a

climate and custody controlled evidence room for the Commission that complies with all North Carolina laws and guidelines.

In September of 2011, the full Commission met and participated in a court ordered mediation with former State Bureau of Investigation Special Agent Duane Deaver. The Commission had initiated contempt proceedings against former Agent Deaver after his testimony during the 2009 Gregory Taylor commission hearing. Ret. Chief Justice Henry E. Frye presided over the day-long mediation and ultimately, the Commission agreed not to oppose a dismissal of the contempt charges. The Commission's opinion in the mediation is attached as Exhibit E. The contents of the mediation are protected pursuant to the North Carolina Rules of Court and cannot be disclosed. On September 14, 2011, Superior Court Judge Osmond Smith dismissed the charge against former Agent Deaver. The court filings are attached as Exhibit E.

In December, 2011, the Commission participated in the first ever hearing pursuant to G.S. 15A-1468 to determine whether the Commission could compel the testimony of a witness who had invoked his privilege against self incrimination. Ultimately, the Judge ruled that the witness had made too many prior inconsistent statements and his testimony would not likely be credible enough to help the Commission reach a correct factual determination in the case at hand.

In the winter of 2011, the Commission was asked to participate in a study funded by the Department Of Justice about the impact of exonerations on victims of crime. The study is attempting to understand the exoneration process from the point of view of a crime victim and searching for ways to lessen the negative impact. The Commission staff participated in a detailed interview with researchers. The staff was invited to discuss their process with Yolanda Littlejohn, the sister of a crime victim in a previous Commission exoneration. Ms. Littlejohn was complementary of the Commission's treatment of her and her family during the

investigation and hearing. The Commission is proud of their efforts to always treat victims of crime with respect and dignity and looks forward to the recommendations from the study.

The Commission's executive director and staff continue to make information about the Commission publicly available. The executive director regularly provides information to legislators and agencies in other states who are considering creating a Commission modeled after North Carolina's. The executive director also provides public presentations to governmental agencies, civic groups, and education institutions. In 2011, the executive director gave presentations to The North Carolina Police Association as well as other civic organizations. In February, 2011, the executive director joined with Greg Taylor and provided a presentation to Administrative Office of the Courts staff. This presentation was approved for Continuing Legal Education credit and given at the North Carolina Judicial Center. The Commission was also featured in a documentary for Nippon Hoso Kyokai, a news television station in Japan.

D. LEGISLATION

During the 2011 long session at the General Assembly, two bills modifying the Commission's enabling statutes were proposed. House Bill 778 and House Bill 780 both made changes to the Commission's operating procedures. Ultimately, the bills were combined into one compromise bill, House Bill 778. The compromise bill received the support of all interested parties. The bill was approved by the House Judiciary B Subcommittee and was passed in the House on June 6, 2011. The bill has been referred to the Senate Judiciary 1 Subcommittee. A copy of the language from House Bill 778 is attached as Exhibit F.

II. THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION PLANS FOR 2012

In 2012, the North Carolina Innocence Inquiry Commission plans to continue to focus on reviewing and investigating 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 cases. The Commission is asking for state funding to cover a part of the lost federal grant funding for DNA testing and staff positions. This funding is essential if the Commission is to keep up with the high volume of case reviews and complete the most appropriate type of DNA testing for each case.

At this time, the Commission does not have any hearings scheduled, but six cases are currently under formal inquiry. The Commission is prepared to conduct hearings in 2012 if the inquiries result in credible, verifiable, new evidence of actual innocence.

The Commission staff is developing a new database system to track case information. Currently, the Commission tracks pertinent information about each case in an Excel spreadsheet. The physical files are also retained in storage. Now that the number of cases reviewed by the Commission has exceeded 1,000, the Commission needs a more sophisticated software program to store information about cases and report statistical data. The Commission is currently reviewing options and Commission staffer, Stormy Ellis has been testing software to customize a database for the Commission. This database is expected to be tested and put into permanent use in 2012.

The Commission continues to support House Bill 778 and hopes to see the bill reviewed and approved in the Senate during the upcoming short session. The Commission's executive

director stands ready to provide information about the Commission's operations, case statistics, and the ways that House Bill 778 would impact the Commission's regular operations.

The Commission remains available to assist other agencies and will continue to provide education and presentations throughout the state. The Commission serves as a resource for other agencies and elected officials who receive innocence claims, but lacks the resources to investigate and evaluate them. Members of the General Assembly may refer post-conviction innocence claims from their constituents to the North Carolina Innocence Inquiry Commission.

CONCLUSION

The members and staff of the North Carolina Innocence Inquiry Commission would like to thank the Joint Legislative Committee on Justice and Public Safety and the entire General Assembly for their creation and support of this groundbreaking part of the criminal justice system. North Carolina continues to pave the way for other states. Other states, including California, Connecticut, Florida, Illinois, New York, Pennsylvania, Texas, and Wisconsin, have created agencies to study the causes of and corrections for wrongful convictions. North Carolina remains the only state to take the proactive step of creating a dedicated innocence inquiry commission.

The loss of federal funding will be a blow to the Commission's efforts. The steady flow of cases and hearings continues and the Commission needs state funding to continue the high quality DNA testing unique to these cases as well as funding for one staff attorney position to continue the excellent work undertaken with the federal funds.

The Commission's executive director would be happy to meet with any member of the General Assembly to further discuss the work of the Commission. The Commissioners and staff are pleased to serve the people of North Carolina and look forward to continuing that service each year.

APPENDIX A

**OPINION OF THE COMMISSION IN
STATE V. KAGONYERA AND WILCOXSON**

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
00 CRS 65086; 00 CRS 65088

STATE OF NORTH CAROLINA)
)
 v.)
)
 KENNETH MANZI KAGONYERA;)
 ROBERT WILCOXSON III)
)
)

ORDER

THIS MATTER came on for hearing before the North Carolina Innocence Inquiry Commission (Commission) on April 28 and 29, 2011, pursuant to N.C.G.S. §§ 15A-1460 – 1475. After careful review of the evidence presented, the Commission hereby makes and enters the following findings of fact:

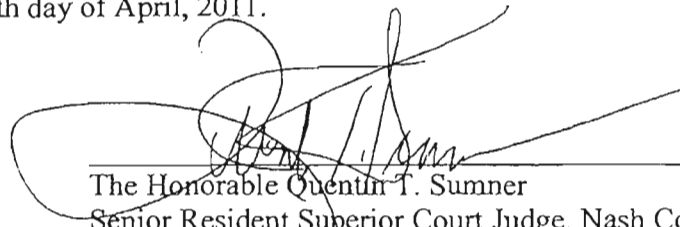
1. On September 18, 2000, Walter Bowman was shot and killed at his residence.
2. On December 13, 2001, Kenneth Kagonyera pled guilty to second degree murder for his alleged role in Bowman's death. Additionally, he pled guilty to separate charges of dog fighting, assault with a deadly weapon with intent to kill inflicting serious injury, felonious breaking and entering, and felonious possession of a Schedule II controlled substance.
3. Pursuant to a plea agreement, these charges were consolidated into a single sentence for second degree murder.
4. On August 26, 2008, Kagonyera submitted a claim of factual innocence to the Commission pursuant to Article 92, Chapter 15A, of the General Statutes, with regard to the second degree murder conviction.

5. On August 15, 2002, Robert Wilcoxson pled guilty to second degree murder for his alleged role in Bowman's death. Pursuant to his plea agreement, all other pending charges facing Wilcoxson were dismissed.
6. On November 22, 2010, Wilcoxson submitted a claim of factual innocence to the Commission pursuant to Article 92, Chapter 15A, of the General Statutes, with regard to the second degree murder conviction.
7. Throughout this inquiry, Kagonyera and Wilcoxson have fully cooperated with Commission staff, in accordance with N.C.G.S. § 15A-1467(g).
8. On April 28 and 29, 2011, the Commission held a full evidentiary hearing in this matter, pursuant to N.C.G.S. § 15A-1468.
9. During the hearing, the Commission considered testimonial and documentary evidence as well as summaries by the Commission staff. This evidence included, amongst other things:
 - a. A 178 page brief provided to the Commission by the staff before the hearing;
 - b. Supplemental documentation provided during the hearing;
 - c. Live testimony by Ms. Wanda Holloway, Kagonyera's Defense Attorney Sean Devereux, Commission Staff Attorneys Jamie Lau and Lindsey Guice Smith, expert testimony from SBI Special Agent Tim Baize, Forensic Biologists Meghan Clement and Shawn Weiss;
 - d. Affidavits from Attorneys Jack Stewart and Al Messer, Car Expert John Flory, Confession Reliability Expert Steven Drizin, and Buncombe County Sheriff's Office Major Glen Matayabas; and

- e. Videotape segments from depositions of Matthew Bacoate, Detective George Sprinkle, Larry Jerome Williams, Jr., Robert Wilcoxson III, and Kenneth Manzi Kagonyera.
 - f. Evidence presented to the Commission in regards to DNA testing.
10. After carefully considering this evidence, the Commission has unanimously concluded that there is sufficient evidence of factual innocence to merit further judicial review.

WHEREFORE, pursuant to N.C.G.S. § 15A-1469(a), and as Chairman of the Commission, the undersigned respectfully requests that the Chief Justice appoint a three-judge panel, not to include any trial judge that has had substantial previous involvement in the case, and issues commissions to its members to convene a special session of the superior court in Buncombe County to hear evidence relevant to the Commission's recommendation.

This the 29th day of April, 2011.



The Honorable Quentin T. Sumner
Senior Resident Superior Court Judge, Nash County
Chairman, North Carolina Innocence Inquiry Commission

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing *Order* was served upon the following persons by depositing a copy of the same, postage pre-paid, in an official depository of the United States Postal Service, addressed as follows:

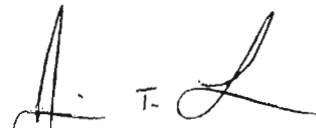
The Honorable Ronald Moore
Buncombe County District Attorney
P.O. Box 7158
Asheville, NC 28802

Mr. Franklin E. Wells, Jr.
Megerian & Wells
175 E. Salisbury Street
Asheboro, NC 27203

Mr. Chris Fialko
Rudolf, Widenhouse, & Fialko
225 East Worthington Avenue, Suite 200
Charlotte, NC 28203

This the 5th day of May, 2011.

**NORTH CAROLINA INNOCENCE
INQUIRY COMMISSION**



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APPENDIX B

**OPINION OF THE THREE JUDGE PANEL IN
STATE V. KAGONYERA AND WILCOXSON**

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NOS. 00 CRS 65086; 00 CRS 65088

STATE OF NORTH CAROLINA

v.

KENNETH MANZI KAGONYERA;
ROBERT WILCOXSON, III

DECISION OF THE COURT PURSUANT TO N.C. Gen. Stat. § 15A-1469

THESE MATTERS came on for hearing before the undersigned Judges of the Superior Court sitting as a Three-Judge Panel appointed by the Chief Justice of the North Carolina Supreme Court pursuant to N.C. Gen. Stat. §15A-1469(a) on September 12, 2011, at a special session of the Buncombe County Superior Court to hear evidence relevant to the North Carolina Innocence Inquiry Commission's recommendation in the cases of State v. Kenneth Manzi Kagonyera, 00 CRS 65086, and State v. Robert Wilcoxson, III, 00 CRS 65088.

The Three-Judge Panel ("the panel") heard evidence on September 12, 13, 14, 15, 19, 20 and 21, 2011. The State of North Carolina was represented by Assistant District Attorney Kate Dreher. The defendant Kagonyera was represented by Noell Tin, Esq. and the defendant Wilcoxson was represented by Christopher Fialko, Esq. The convicted persons, Kagonyera and Wilcoxson, were present at all times in open court during these proceedings.

The evidence consisted of the sworn testimony of thirty-three persons, stipulations of the State and of counsel for the defendants, the transcripts and files generated pertaining to the previous proceedings in these matters, and more than 240 exhibits. The evidence was concluded on September 21, 2011. At the conclusion of the evidence the State and the defendants, through counsel, made closing statements. Thereafter, the court recessed in order for panel members to review and consider the evidence received during the seven days of the hearing.

N.C. Gen. Stat. §15A-1460 (1) provides that a "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 post-conviction relief.

N.C. Gen. Stat. §15A-1469 provides that the 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 a dismissal of all or any of the charges. If the vote is not unanimous, the panel shall deny relief.


N.C. Gen. Stat. §15A-1470 provides that there is no right to any further review of the decision of the three-judge panel but the convicted person retains the right to other post-conviction relief.

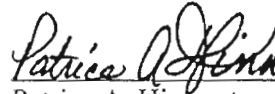
The panel members have now considered N.C. Gen. Stat. §15A-1460, *et seq.* and all of the evidence presented and the arguments of counsel for the State and ~~the~~ Kagonyera and Wilcoxson, the convicted persons. The matter is now ripe for decision.

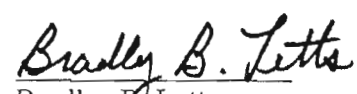
The unanimous decision of the three-judge panel of Superior Court Judges is that the defendants, Kenneth Manzi Kagonyera and Robert Wilcoxson III, the convicted persons, have proved by clear and convincing evidence that they are innocent of the murder of Walter Bowman on September 18, 2000.

IT IS THEREFORE ORDERED, pursuant to the decision of the three-judge panel and N.C. Gen. Stat. §15A-1469, that the relief sought by the convicted persons, Kenneth Manzi Kagonyera and Robert Wilcoxson, III, is granted and that the charge of murder of Walter Bowman on September 18, 2000, as to each of the convicted persons shall be, and the same is hereby, DISMISSED.

This the 22nd day of September, 2011.


W. Erwin Spairmour
Senior Superior Court Judge
Presiding


Patrice A. Hinchant
Superior Court Judge


Bradley B. Letts
Superior Court Judge

APPENDIX C

**NORTH CAROLINA INNOCENCE INQUIRY COMMISSION
2011 CASE STATISTICS**

Compiled January, 2011

The Commission began operation in 2007

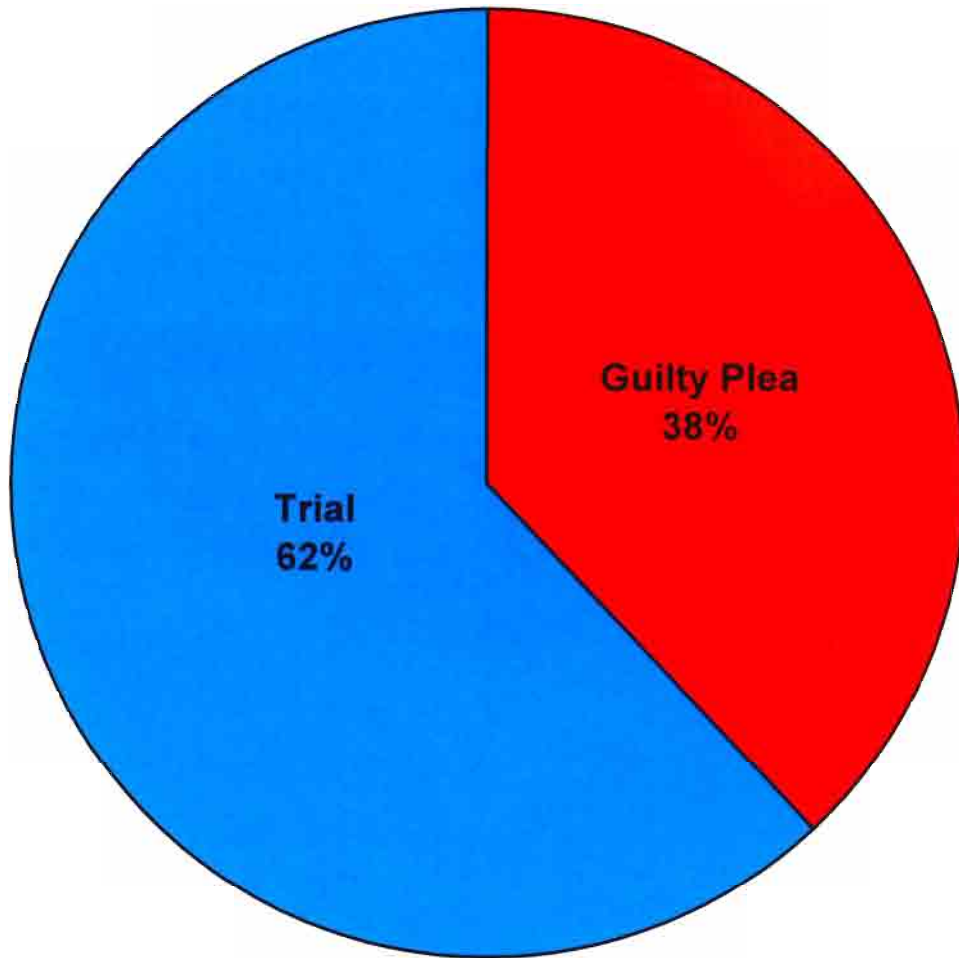
Total Number of Claims Received since Commission's Creation*	1102
Number of General Information Requests Received since Creation†	164
Total Number of Cases Closed since Commission's Creation*	953
Number of Claims Received in 2011*	266
Number of Cases Currently in Investigation	19
Number of Cases Currently in Formal Inquiry	6
Number of Cases sent through Hearing since Commission's Creation	4
Exonerations‡	3

* Figure does not include General Information Requests.

† General information requests are not considered innocence claims, but do require opening a case file and a response on behalf of the Commission.

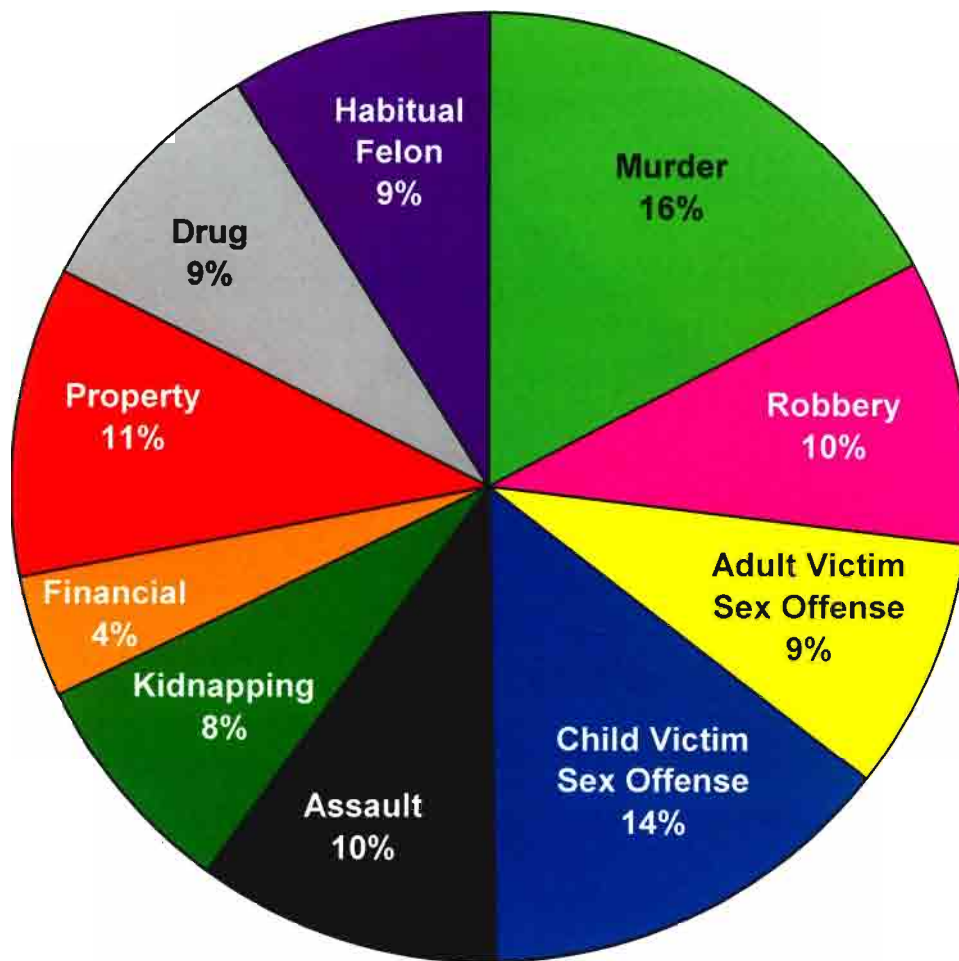
‡ Three Claimants have been exonerated through two Commission proceedings.

CONVICTIONS RESULTING FROM TRIAL OR GUILTY PLEA



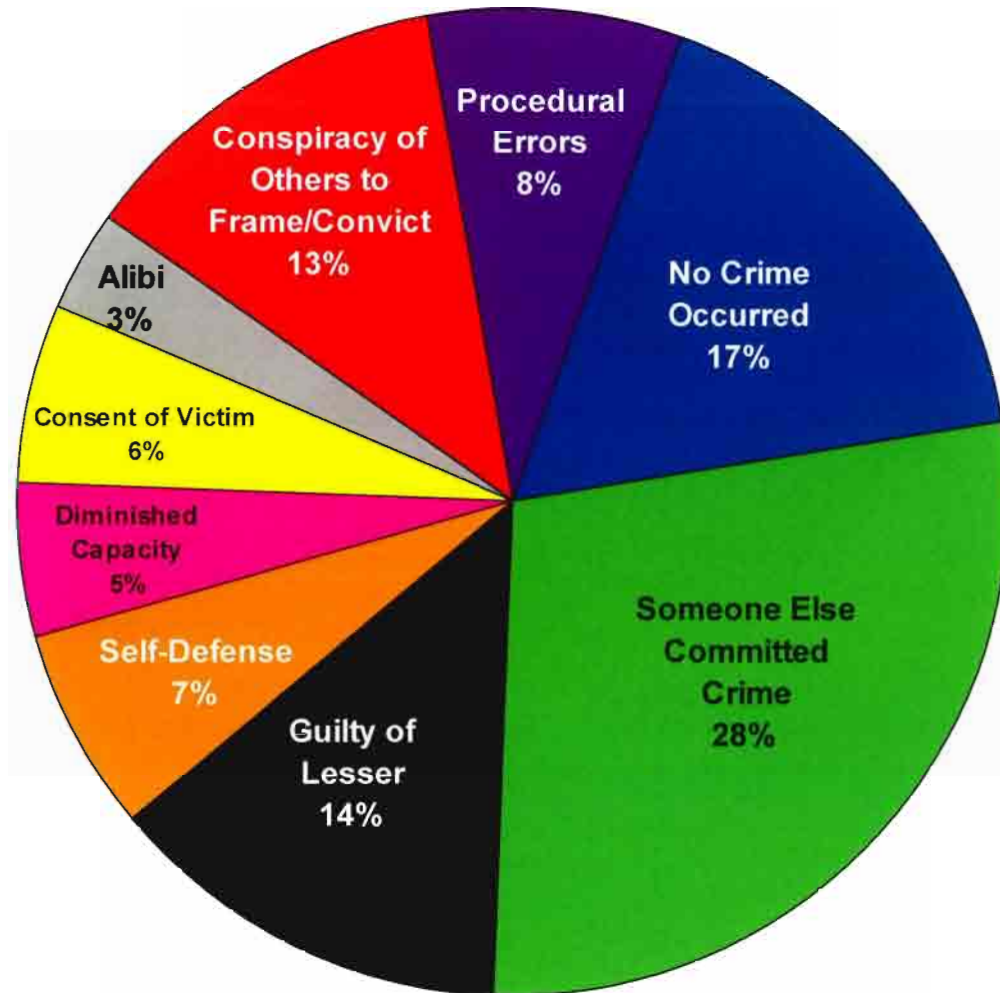
- Data compiled from the 683 cases in which information was available.
- Alford and no contest pleas are a part of the plea category.

APPLICANT'S CONVICTIONS



- Some applicants were convicted of multiple offenses
- Data compiled from the 743 cases in which information was available

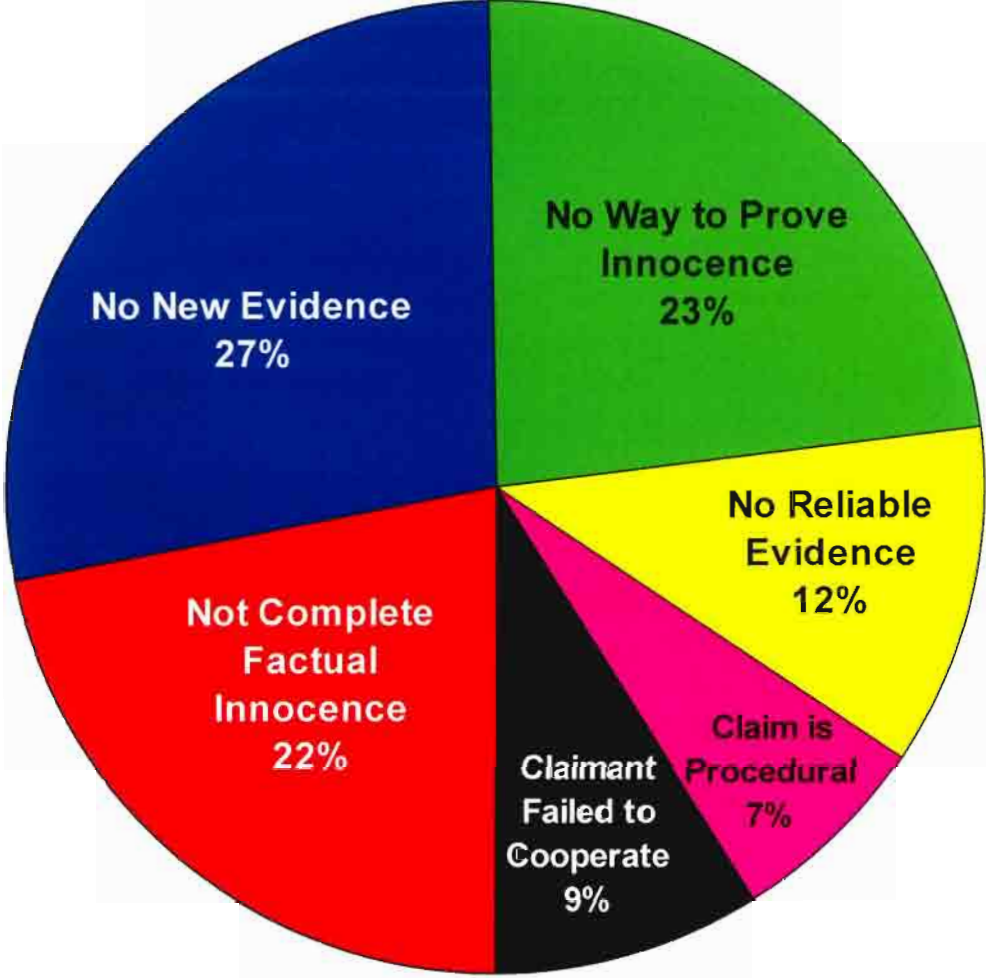
APPLICANT'S INNOCENCE CLAIMS



- Some applicants made multiple innocence claims
- Data compiled from the 665 cases in which information was available.

It is important to note that several of these categories do not fit the statutory requirement for actual innocence and result in an 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 REJECTION



- Some cases were rejected for multiple reasons
- Data compiled from all 953 rejected cases

APPENDIX D

EXPANSION BUDGET REQUEST

JUDICIAL DEPARTMENT POSITION COSTS

Job Code	Classification Title		
31000450-XX	Innocence Commission Staff Attorney II		
Note			
GR 25			
Fund Code	Description of Fund		
1700	Independent Commissions		
1450	Innocence Inquiry Commission	N/R = Non-Recurring Cost	
Exp Code	Description of Expenditure	2012-13	N/R
531111	EPA-Reg. Salaries - Aprop. (Grade 25)	\$80,079	
531511	Social Security (7.65%)	\$6,127	
531521	Retirement (14.31%)	\$11,460	
531561	Hospital Insurance	\$5,192	
532132-031	Medical Evidence of Record (DNA testing& services)	\$50,000	
532144	PC/Telecom/Printer Support Services	\$600	N/R
532430-00	Maintenance Agreement - Equip.	\$1,332	
532447-01	Maint. Agreements - PC's & Printers	\$75	
532452	Maintenance Agreement - Mainframe Software Conn.	\$1,205	
532714	Transportation-Ground In-State (36000 Miles per Year @ Avg. Cents per Mile)	\$19,980	
532721	Lodging - In-State (30 Days @ \$63.90 Daily)	\$1,917	
532724	Meals - In-State (30 Days @ \$36.35 Daily)	\$1,091	
532812	Telecom. Data Charges - D.P. Lines	\$1,699	
532930-L4	Training and Registration; Position Specialized	\$1,140	
533110-L2	General Office Supplies, Specialized	\$1,062	
534511	Office Furniture	\$7,394	N/R
534534	Personal Computer Purchases	\$1,290	N/R
534539-01	Other Equipment	\$800	N/R
534630-L4	Reference Materials & Learning Resources Specialized	\$500	
534713	Personal Computer Software	\$642	N/R
535890	Other Administrative Expense	\$500	
		2012-13	
Total Cost:		\$194,085	
Total Recurring Cost:		\$183,359	
Total Non-Recurring Cost:		\$10,726	

Job Code	Classification Title
31000450-XX	Innocence Commission Staff Attorney II
Note	
GR 25	
Fund Code	Description of Fund
1700	Independent Commissions
1450	Innocence Inquiry Commission

State Funding Alternatives

2012-13	Cost Alternatives	2012-13 POSITION COSTS			2013-14 EST	
		Effective Dates	RECUR	N/R	TOTALS	RECURRING
	Position Effective 07-01-2012		\$183,359	\$10,726	\$194,085	\$183,359
	Position Effective 08-01-2012		\$168,086	\$10,726	\$178,812	
	Position Effective 09-01-2012		\$152,804	\$10,726	\$163,530	
	Position Effective 10-01-2012		\$137,524	\$10,726	\$148,250	
	Position Effective 11-01-2012		\$122,244	\$10,726	\$132,970	
	Position Effective 12-01-2012		\$106,965	\$10,726	\$117,691	
	Position Effective 01-01-2013		\$91,683	\$10,726	\$102,409	
	Position Effective 02-01-2013		\$76,406	\$10,726	\$87,132	
	Position Effective 03-01-2013		\$61,123	\$10,726	\$71,849	
	Position Effective 04-01-2013		\$45,843	\$10,726	\$56,569	
	Position Effective 05-01-2013		\$30,566	\$10,726	\$41,292	
	Position Effective 06-01-2013		\$15,285	\$10,726	\$26,011	

APPENDIX E

FILINGS IN STATE V. PETER DUANE DEEVER

NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO: 10 CRS 016362

STATE OF NORTH CAROLINA

V.

PETER DUANE DEEVER

ORDER FOR MEDIATION

IT IS ORDERED, ADJUDGED AND DECREED that the parties in the above captioned case and their attorneys participate in mediation pursuant to North Carolina General Statute § 7.A-38.

The Conference must be completed within sixty (60) days of this Order.

This matter shall be mediated by Retired Chief Justice Henry E. Frye.

Should Retired Chief Justice Henry E. Frye become unavailable for any reason, the Court shall appoint an alternative certified mediator.

Retired Chief Justice Frye shall be compensated at a rate agreed upon by the parties.

The mediation shall be completed by the deadline set forth above and the mediator shall report the results on form AOC-CV-813 to the Court within 10 (ten) days after the mediation is completed.

This the 4TH day of AUGUST, 2011.


The Honorable William O. Smith, III

Senior Resident Superior Court Judge, Judicial District 9A

STATE OF NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE DISTRICT
SUPERIOR COURT CRIMINAL DIVISION
FILE NO: 10 CRS 016362

STATE OF NORTH CAROLINA)
)
V.)
)
PETER DUANE DEEVER)
)

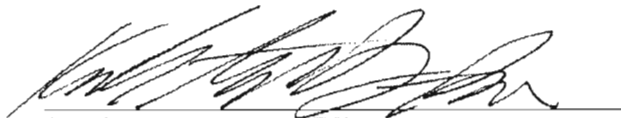
MEDIATED SETTLEMENT AGREEMENT

On October 7, 2010, the North Carolina Innocence Inquiry Commission ("Commission") found probable cause to initiate a contempt proceeding against Peter Duane Deaver ("Deaver"). On September 9, 2011, the Commission and Deaver attended a court ordered mediation in good faith. The terms of this agreement were voluntarily arrived at through a mediation conducted by Former Chief Justice Henry E. Frye.

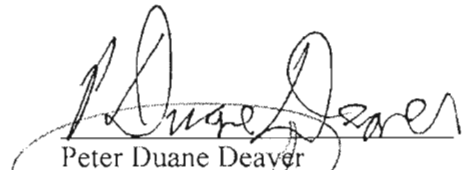
Deaver acknowledges the confusing nature of his testimony, and he understands how the Commission could have been misled.

In light of this acknowledgement, the Commission will not oppose a dismissal of the contempt charge filed against Deaver in the above-captioned matter.

Agreed to September 9, 2011.



Kendra Montgomery-Blinn
Executive Director
North Carolina Innocence Inquiry Commission



Peter Duane Deaver



Philip Miller
Attorney for Peter Duane Deaver



Philip Isley
Attorney for Peter Duane Deaver

NORTH CAROLINA


WAKE COUNTY

STATE OF NORTH CAROLINA

v.

PETER DUANE DEAVER
Defendant

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
10 CRS 16362

SEP 14 11 29 AM '11
WAKE COUNTY, N.C. S.C.
BY 

ORDER OF DISMISSAL

THIS MATTER coming on to be heard before the undersigned Judge Presiding at the September 14, 2011 Session of Criminal Superior Court of Wake County; and it appearing to the Court as follows:

Upon a mediated settlement conference conducted herein, a resolution of this matter has been reached, under which the North Carolina Innocence Inquiry Commission does not oppose dismissal of the contempt charge filed against the defendant, and upon motion of the defendant for dismissal, the Special Prosecutor agrees to dismissal of the order to show cause and contempt charge against the defendant.

NOW, THEREFORE, IT IS HEREBY ORDERED that upon agreement of the Special Prosecutor to dismiss the contempt charge against the defendant and without opposition by the North Carolina Innocence Inquiry Commission, the motion of the defendant to dismiss the contempt charge is granted;

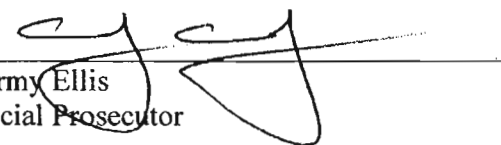
AND FURTHER, IT IS HEREBY ORDERED that the order to show cause and contempt charge against the defendant herein are dismissed.

This the 14th day of September, 2011.



W. Osmond Smith III
Judge Presiding

Agreement to Dismissal:


Stormy Ellis
Special Prosecutor

APPENDIX F
HOUSE BILL 778

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

3

HOUSE BILL 778
Committee Substitute Favorable 6/2/11
Third Edition Engrossed 6/3/11

Short Title: Amend Innocence Commission Laws.

(Public)

Sponsors:

Referred to:

April 7, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND LAWS RELATING TO THE NORTH CAROLINA INNOCENCE
3 INQUIRY COMMISSION AND THE PRESERVATION OF BIOLOGICAL EVIDENCE.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 15A-268(a1) reads as rewritten:

6 "(a1) Notwithstanding any other provision of law and subject to subsection (b) of this
7 section, a custodial agency shall preserve any physical ~~evidence~~ evidence, regardless of the
8 date of collection, that is reasonably likely to contain any biological evidence collected in the
9 course of a criminal investigation or prosecution. Evidence shall be preserved in a manner
10 reasonably calculated to prevent contamination or degradation of any biological evidence that
11 might be present, subject to a continuous chain of custody, and securely retained with sufficient
12 official documentation to locate the evidence."

13 **SECTION 2.** G.S. 15A-268(a7) reads as rewritten:

14 "(a7) Upon written request by the defendant, the custodial agency shall prepare an
15 inventory of biological evidence relevant to the defendant's case that ~~has been preserved~~
16 pursuant to this section is in the custodial agency's custody. If the evidence was destroyed
17 through court order or other written directive, the custodial agency shall provide the defendant
18 with a copy of the court order or written directive."

19 **SECTION 3.** G.S. 15A-268(b) reads as rewritten:

20 "(b) The custodial agency required to preserve evidence pursuant to subsection (a1) of
21 this section may dispose of the evidence prior to the expiration of the period of time described
22 in subsection (a6) of this section if all of the following conditions are met:

23 (1) The custodial agency sent notice of its intent to dispose of the evidence to
24 the district attorney in the county in which the conviction was obtained.

25 (1a) The custodial agency has determined that it has no duty to preserve the
26 evidence under G.S. 15A-1471.

27 (2) The district attorney gave to each of the following persons written
28 notification of the intent of the custodial agency to dispose of the evidence:
29 any defendant convicted of a felony who is currently incarcerated in
30 connection with the case, the defendant's counsel of record for that case, and
31 the Office of Indigent Defense Services. The notice shall be consistent with
32 the provisions of this section, and the district attorney shall send a copy of
33 the notice to the custodial agency. Delivery of written notification from the
34 district attorney to the defendant was effectuated by the district attorney
35 transmitting the written notification to the superintendent of the correctional



1 facility where the defendant was assigned at the time and the
2 superintendent's personal delivery of the written notification to the
3 defendant. Certification of delivery by the superintendent to the defendant in
4 accordance with this subdivision was in accordance with subsection (c) of
5 this section.

- 6 (3) The written notification from the district attorney specified the following:
- 7 a. That the custodial agency would destroy the evidence collected in
8 connection with the case unless the custodial agency received a
9 written request that the evidence not be destroyed.
 - 10 b. The address of the custodial agency where the written request was to
11 be sent.
 - 12 c. That the written request from the defendant, or his or her
13 representative, must be received by the custodial agency within 90
14 days of the date of receipt by the defendant of the district attorney's
15 written notification.
 - 16 d. That the written request must ask that the evidence not be destroyed
17 or disposed of for one of the following reasons:
 - 18 1. The case is currently on appeal.
 - 19 2. The case is currently in postconviction proceedings.
 - 20 3. The defendant will file a motion for DNA testing pursuant to
21 G.S. 15A-269 within 180 days of the postmark of the
22 defendant's response to the district attorney's written
23 notification of the custodial agency's intent to dispose of the
24 evidence, unless a request for extension is requested by the
25 defendant and agreed to by the custodial agency.
 - 26 4. The case has been referred to the North Carolina Innocence
27 Inquiry Commission pursuant to Article 92 of Chapter 15A of
28 the General Statutes.

- 29 (4) The custodial agency did not receive a written request in compliance with
30 the conditions set forth in sub-subdivision (3)d. of this subsection within 90
31 days of the date of receipt by the defendant of the district attorney's written
32 notification."

33 **SECTION 4.** G.S. 15A-1460 reads as rewritten:

34 **"§ 15A-1460. Definitions.**

35 The following definitions apply in this Article:

- 36 (1) "Claim of factual innocence" means a claim on behalf of a living person
37 convicted of a felony in the General Court of Justice of the State of North
38 Carolina, asserting the complete innocence of any criminal responsibility for
39 the felony for which the person was convicted and for any other reduced
40 level of criminal responsibility relating to the crime, and for which there is
41 some credible, verifiable evidence of innocence that has not previously been
42 presented at trial or considered at a hearing granted through postconviction
43 relief.
- 44 (1a) "Claimant" means a person asserting that he or she is completely innocent of
45 any criminal responsibility for a felony crime upon which the person was
46 convicted and for any other reduced level of criminal responsibility relating
47 to the crime.
- 48 (2) "Commission" means the North Carolina Innocence Inquiry Commission
49 established by this Article.
- 50 (3) "Director" means the Director of the North Carolina Innocence Inquiry
51 Commission.

1 (4) "Victim" means the victim of the crime, or if the victim of the crime is
2 deceased, the next of kin of the victim."

3 **SECTION 5.** G.S. 15A-1467(a) reads as rewritten:

4 "(a) A claim of factual innocence may be referred to the Commission by any court,
5 ~~person, or agency.~~ a State or local agency, a claimant, or a claimant's counsel. The Commission
6 shall not consider a claim of factual innocence if the convicted person is deceased. The
7 determination of whether to grant a formal inquiry regarding any other claim of factual
8 innocence is in the discretion of the Commission. The Commission may informally screen and
9 dismiss a case summarily at its discretion."

10 **SECTION 6.** G.S. 15A-1468(b) reads as rewritten:

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

19 **SECTION 7.** The Innocence Inquiry Commission shall include, as part of its rules
20 of operation, the holding of a prehearing conference to be held at least 10 days prior to any
21 proceedings of the full Commission. Only the following persons shall be notified and
22 authorized to attend the prehearing conference: the District Attorney, or the District Attorney's
23 designee, of the district where the claimant was convicted of the felony upon which the claim
24 of factual innocence is based; the claimant's counsel, if any; the Chair of the Commission; the
25 Executive Director of the Commission; and any Commission staff designated by the Director.
26 The District Attorney, or designee, shall be provided (i) an opportunity to inspect any evidence
27 that may be presented to the Commission that has not previously been presented to any judicial
28 officer or body and (ii) any information that he or she deems relevant to the proceedings. Prior
29 to any Commission proceedings, the District Attorney or designee is authorized to provide the
30 Commission with a written statement, which shall be included in the record of the
31 Commission's proceedings. Any statement included in the record shall be part of the
32 Commission's record of proceedings pursuant to G.S. 15A-1468(e).

33 **SECTION 8.** G.S. 15A-1469 reads as rewritten:

34 **"§ 15A-1469. Postcommission three-judge panel.**

35 (a) If the Commission concludes there is sufficient evidence of factual innocence to
36 ~~merit~~ judicial review, the Chair of the Commission shall request the Chief Justice to appoint a
37 three-judge panel, not to include any trial judge that has had substantial previous involvement
38 in the case, and issue commissions to the members of the three-judge panel to convene a
39 special session of the superior court of the original jurisdiction to hear evidence relevant to the
40 Commission's recommendation. The senior judge of the panel shall preside. The Chief Justice
41 shall appoint the three-judge panel within 20 days of the filing of the Commission's opinion
42 finding sufficient evidence of factual innocence to merit judicial review.

43 (a1) ~~If there is an allegation of or evidence~~ the Commission concludes that there is
44 credible evidence of prosecutorial misconduct in the case, the Chair of the Commission ~~or the~~
45 ~~district attorney of the district of conviction~~ may request the ~~Director of the Administrative~~
46 ~~Office of the Courts~~ Attorney General to appoint a special prosecutor to represent the State in
47 lieu of the district attorney of the district of conviction or the district attorney's designee. The
48 request for the special prosecutor shall be made within 20 days of the filing of the
49 Commission's opinion finding sufficient evidence of innocence to merit judicial review.

50 Upon receipt of a request under this subsection to appoint a special prosecutor, the ~~Director~~
51 ~~of the Administrative Office of the Courts~~ Attorney General may temporarily assign a district

1 attorney, assistant district attorney, or other qualified attorney, ~~including one from the~~
2 ~~prosecutorial district where the convicted person was tried,~~ to represent the State at the hearing
3 before the three-judge panel. However, the ~~Director of the Administrative Office of the Courts~~
4 Attorney General shall not appoint as special prosecutor any attorney who prosecuted or
5 assisted with the prosecution in the trial of the convicted ~~person.~~ person, or is a prosecuting
6 attorney in the district where the convicted person was tried. The appointment shall be made
7 ~~pursuant to G.S. 7A-64 and shall be made~~ no later than 20 days after the receipt of the request.

8 (b) The senior resident superior court judge shall enter an order setting the case for
9 hearing at the special session of superior court for which the three-judge panel is commissioned
10 and shall require the State to file a response to the Commission's opinion within 90 days of the
11 date of the order. Such response, at the time of original filing or through amendment at any
12 time before or during the proceedings, may include joining the defense in a motion to dismiss
13 the charges with prejudice on the basis of innocence.

14 (c) The district attorney of the district of conviction, or the district attorney's designee,
15 shall represent the State at the hearing before the three-judge panel, except as otherwise
16 provided by this section.

17 (d) The three-judge panel shall conduct an evidentiary hearing. At the hearing, the
18 court, and the defense and prosecution through the court, may compel the testimony of any
19 witness, including the convicted person. All credible, verifiable evidence relevant to the case,
20 even if considered by a jury or judge in a prior proceeding, may be presented during the
21 hearing. The convicted person may not assert any privilege or prevent a witness from testifying.
22 The convicted person has a right to be present at the evidentiary hearing and to be represented
23 by counsel. A waiver of the right to be present shall be in writing.

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

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

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

32 (h) The three-judge panel shall rule as to whether the convicted person has proved by
33 clear and convincing evidence that the convicted person is innocent of the charges. Such a
34 determination shall require a unanimous vote. If the vote is unanimous, the panel shall enter
35 dismissal of all or any of the charges. If the vote is not unanimous, the panel shall deny relief.

36 (i) A person who is ~~determined~~ by the three-judge panel to be innocent of all charges
37 and against whom the charges are dismissed pursuant to this section is eligible for
38 compensation under Article 8 of Chapter 148 of the General Statutes without obtaining a
39 pardon of innocence from the Governor."

40 **SECTION 9.** G.S. 7A-64(a1) is repealed.

41 **SECTION 10.** Article 92 of Chapter 15A of the General Statutes is amended by
42 adding a new section to read:

43 **"§ 15A-1471. Preservation of files and evidence; production of files and evidence; forensic**
44 **and DNA testing.**

45 (a) Upon receiving written notice from the Commission of a Commission inquiry, the
46 State shall preserve all files and evidence subject to disclosure under G.S. 15A-903. Once the
47 Commission provides written notice to the State that the Commission's inquiry is complete, the
48 duty to preserve under this section shall cease; however, other preservation requirements may
49 be applicable.

50 (b) The Commission is entitled to a copy of all records preserved under subsection (a)
51 of this section, including access to inspect and examine all physical evidence.

1 (c) Upon request of the Commission, the State shall transfer custody of physical
2 evidence to the Commission's Director, or the Director's designee, for forensic and DNA
3 testing. The Commission shall preserve evidence in a manner reasonably calculated to prevent
4 contamination or degradation of any biological evidence that might be present, while subject to
5 a continuous chain of custody and securely retained with sufficient official documentation to
6 locate the evidence. At or prior to the completion of the Commission's inquiry, the Commission
7 shall return all remaining evidence.

8 (d) The Commission shall have the right to subject physical evidence to forensic and
9 DNA testing, including consumption of biological material, as necessary for the Commission's
10 inquiry. If testing complies with FBI requirements and the data meets NDIS criteria, profiles
11 obtained from the testing shall be searched and uploaded to CODIS. The Commission shall
12 incur all costs associated with ensuring compliance with FBI requirements and NDIS criteria."

13 **SECTION 11.** G.S. 148-82(b) reads as rewritten:

14 "(b) Any person who, having been convicted of a felony after pleading not guilty or nolo
15 contendere and having been imprisoned therefor in a State prison of this State, and who is
16 determined to be innocent of all charges and against whom the charges are dismissed pursuant
17 to G.S. 15A-1469 may as hereinafter provided present by petition a claim against the State for
18 the pecuniary loss sustained by the person through his or her erroneous conviction and
19 imprisonment, provided the petition is presented within five years of the date that the dismissal
20 of the charges is entered by the three-judge panel under G.S. 15A-1469."

21 **SECTION 12.** This act is effective when it becomes law and applies to any
22 pending claims on the effective date or claims filed on or after the effective date.