

STATE OF NORTH CAROLINA
ROBESON COUNTY

Filed IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

2014 SEP -2 P 4: 26

STATE OF NORTH CAROLINA

vs.

HENRY LEE McCOLLUM,

AND

LEON BROWN

Defendants.

ROBESON COUNTY, C.S.C.

Robeson Co. File Nos.

83 CRS 15506-07

Cumberland Co. File No.

91 CRS 40727

Robeson Co. File Nos.

83 CRS 15822-23

Bladen Co. File Nos.

92 CRS 2491-92

ORDER FOR RELIEF

Defendants Henry Lee McCollum and Leon Brown, through counsel, filed motions with this court pursuant to N.C. Gen. Stat. Sections 15A-269 and 15A-270, Art. I, Section 19 of the N.C. Constitution, and the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution, to vacate the convictions and death sentence against Mr. McCollum and the conviction and sentence against Mr. Brown, and order their immediate discharge from confinement. After having considered evidence presented by the parties at an evidentiary hearing, the Court issues the following findings and order.

1. On September 29, 1983, 19-year-old Henry McCollum and 15-year-old Leon Brown were arrested for the murder of Sabrina Buie. In October 1984, both defendants were tried together in Robeson County, convicted of first-degree murder and rape, and sentenced to death. *See State v. McCollum*, 321 N.C. 557, 364 S.E.2d 112 (1988).

2. In *McCollum and Brown*, 312 NC 557 (1988), the North Carolina Supreme Court vacated the defendants' convictions and ordered new trials.

3. Mr. McCollum was reconvicted and resentenced to death at his second trial in 1991. Mr. Brown was reconvicted of first-degree rape at his second trial in 1992, and sentenced to life in prison. The facts of these cases are reported in the opinions *State v. McCollum and Brown*, 312 NC 557 (1988) and *State v. McCollum* 334 NC 208 (1994) and *State v. Brown* 112 NC App 390 (1993).

4. The evidence against both Mr. McCollum and Mr. Brown was centered on and comprised almost entirely of their confessions.

5. No physical evidence – either at the time of their arrests or at any time since – linked Mr. McCollum or Mr. Brown to the scene or the commission of this crime. Both Mr. McCollum and Mr. Brown, as well as their alleged and uncharged accomplices, were eliminated as the sources of an unknown and potentially identifiable fingerprint found at the crime scene.

6. Both Mr. McCollum and Mr. Brown have maintained their complete innocence of this crime.

7. On November 6, 2004, this Court granted Mr. McCollum's motion for post-conviction DNA testing of biological evidence pursuant to N.C. Gen. Stat. §15A-269.

8. In 2010, at the request of Mr. Brown, the North Carolina Innocence Inquiry Commission ("Commission") staff began investigating his claim of actual innocence. The Commission undertook to test and re-test the physical evidence collected by law enforcement in Mr. Brown's case.

9. After DNA testing of physical evidence in 2004 and 2010, Mr. McCollum and Mr. Brown, respectively, were excluded as possible contributors to DNA from a cigarette butt and other items found at the crime scene adjacent to direct evidence of the murder.

10. Over four years of testing, the Commission staff received DNA testing results for several items of physical evidence obtained in the course of their investigation in Mr. Brown's case. The Commission's testing confirmed that the Y-STR DNA profile obtained from the cigarette butt found next to bloody sticks and other evidence at the crime scene is consistent with the Y-STR DNA profile obtained from another individual: State prison inmate Roscoe Artis.

11. These DNA tests results not only contradict the State's previous theory that Mr. McCollum and Mr. Brown raped and murdered Sabrina Buie with certain alleged but uncharged accomplices; they, along with other circumstantial evidence, show a strong likelihood that the serial rapist and murderer Mr. Artis, alone, raped and murdered Ms. Buie.

12. These newly-discovered DNA results, presented by the Commission to counsel for Mr. McCollum, counsel for Mr. Brown, and counsel for the State, yield favorable evidence for Mr. McCollum and Mr. Brown. This conclusion the State does not contest.

13. The results of the court-ordered DNA testing pursuant to N.C. Gen. Stat. § 15A-269, especially when considered together with the rest of the results of the Commission's investigation, are favorable to Mr. McCollum and Mr. Brown. The Defendants have thus satisfied the standard under §15A-270, and they are entitled to relief as available under the statute.

14. The State has conceded that Mr. McCollum and Mr. Brown are entitled to relief under §15A-270, and has indicated that there is insufficient evidence to retry them.


15. Under these circumstances, the interests of justice in this case compel that the Court vacate the convictions and death sentence of Mr. McCollum and the conviction and life sentence of Mr. Brown, and discharge both men from confinement based on significant new evidence that they are in fact innocent.

CONCLUSION AND ORDER


Based on the foregoing and in view of the favorable DNA evidence tending to establish Henry McCollum's and Leon Brown's innocence of the crimes for which they were convicted and sentenced, and pursuant to N.C. Gen. Stat. §15A-270(c)(2), in the interests of justice this Court:

1. Vacates Mr. McCollum's convictions of first-degree murder and first-degree rape and his death sentence under Robeson County case numbers 83 CRS 15506-07 and Cumberland County case number 91 CRS 40727;
2. Vacates Mr. Brown's conviction of first-degree rape and life sentence under Robeson County case number 83 CRS 15822-23, and Bladen County case numbers 92 CRS 2491-92;
3. Orders the immediate discharge of Mr. McCollum and Mr. Brown from the custody of the State of North Carolina; and
4. Dismisses with prejudice all charges in these cases against Mr. McCollum and Mr. Brown, based upon the District Attorney's statement that he does not intend to seek any further charges against the defendants along with the evidence of the defendants' innocence.
5. Orders that the Department of Public Safety, Division of Adult Corrections (Department of Corrections) immediately process and release the defendants.

SO ORDERED AND ADJUDGED, THIS THE 2nd DAY OF September, 2014.


Honorable Douglas B. Sasser
Superior Court Judge Presiding

A TRUE COPY
CLERK OF SUPERIOR COURT
ROBESON COUNTY


Assistant, Deputy Clerk Superior Court