

STATE OF WISCONSIN CLAIMS BOARD

CLAIM OF: MARVIN D. CLEMENTS

CLAIM NO. 2015-039-CONV

DECISION

The Claims Board considered this matter on March 16, 2016. Claimant, Marvin D. Clements, did not request a hearing. The Claims Board reviewed the written materials submitted by Clements. The Milwaukee County District Attorney's Office did not submit a written response to this claim.

Background

This is a claim for Innocent Convict Compensation pursuant to § 775.05, Wis. Stats. The claim relates to Clements' 2000 conviction for two counts of Knowingly Violating a Domestic Abuse Order and one count of Bail Jumping-Misdemeanor. Clements states he is innocent of this crime. He requests the maximum reimbursement of \$25,000 for the 9 months he spent in prison plus an additional \$15,000 for his three years of probation.

Claimant's Facts and Argument

In 1999, Clements was charged with two counts of Knowingly Violating a Domestic Abuse Order (KVDAO) and one count of Bail Jumping-Misdemeanor because of phone calls he made to the mother of his children, who had a restraining order against him. During the jury deliberation phase of Clements' trial, the jury sent two questions to the court, the second of which was "does the defendant's intention matter in this case?" The court called the jury back into the courtroom and stated, "With regard to Jury Instruction 2040, violating a temporary restraining order or an injunction, the answer to the question does the defendant's intention matter in this case, no, it does not." This statement by the court was incorrect. The court then reread a portion of the jury instructions, stating, "Again, the parties have stipulated that the defendant knew that the injunction had been issued. As to whether or not he knew that his act violated its terms, that's a question for the jury." This statement by the court was correct. The court gave correct instructions to the jury regarding the bail jumping charge.

Clements appealed his conviction, arguing that “the court’s clearly erroneous oral instructions effectively relieved the State of its burden of proving the *mens rea* required by each offense beyond a reasonable doubt.” Clements’ sole defense at his trial was that, “he did not know he was violating the restraining order, injunction, or the terms of his bond because he had been trying to contact his children, not Valisha Walker, who was the mother of his four children,” and who was the person with whom he had been ordered to have no contact. The court of appeals reversed Clements’ convictions for violating the KVDAO, finding, “it is impossible to tell whether the jury followed the correct instruction on intent, or the incorrect one that allowed for conviction on the charges under Wis. Stat. § 813.12 even though ‘intention’ did not ‘matter.’” The appeals court found that the trial court’s instructions regarding the bail jumping charge were correct and upheld that conviction. The appeals court remanded the KVDAO violation charges for retrial.

Clements was released in September 2000, after serving his sentence. In September 2001, the State declined to retry Clements because he had already served his time.

DA’s Response and Argument

The Milwaukee County District Attorney’s Office (DA) did not respond to this claim.

Discussion and Conclusion

Under the standards of Wis. Stat. § 775.05(3), the Claims Board must determine whether or not the evidence is clear and convincing that the petitioner was innocent of the crime for which he was imprisoned.

The primary evidence provided by Clements in support of his petition was that the court of appeals remanded the KVDAO charges due to improper jury instructions. However, based on long-standing precedent, the Claims Board does not automatically equate such a remand with innocence. A claimant like Clements must prove his innocence by clear and convincing evidence. The remand, standing alone, does not automatically mean that a claimant has proven his innocence by clear and convincing evidence. The remand does not address actual innocence inasmuch as it demonstrates that there was an error at trial. These are two very different standards.

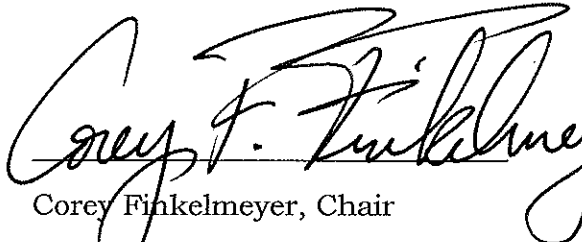
Moreover, the record also appears to show that Clements clearly had in fact been contacting Valisha Walker in actual violation of the domestic abuse order. While there appears to be some question as to whether Clements knew that such acts were illegal, it is Clements’ burden in this forum to prove by clear and convincing evidence that he did not know such acts were illegal. Unfortunately, on this point Clements has not carried his burden and can point to no facts in the record to support his lack of

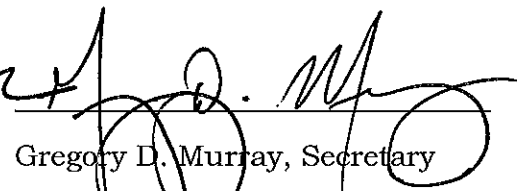
knowledge. The only fact he points to is the erroneous jury instruction. This error, however, does not constitute actual facts supporting his lack of intent on the KVDAO crime.

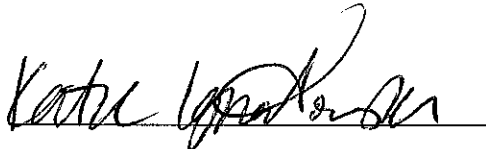
Based on the above, and after hearing the evidence on the petition and reviewing all of the written submissions, the Board concludes and finds that the evidence is not clear and convincing that Clements was innocent of the 2000 conviction for Knowingly Violating a Domestic Abuse Order and Bail Jumping for which he was imprisoned. Accordingly, the Board further concludes that no compensation shall be awarded.

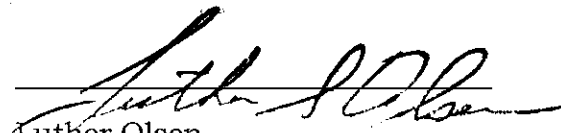
Vote: 4-0

Dated at Madison, Wisconsin this 14th day of April, 2016


Corey Finkelmeyer, Chair
Representative of the Attorney General


Gregory D. Murray, Secretary
Representative of the Secretary of Administration


Katie E. Ignatowski
Representative of the Governor


Luther Olsen
Senate Finance Committee