

STATE OF WISCONSIN CLAIMS BOARD

CLAIM OF: RAYNARD R. JACKSON

CLAIM NO. 2014-080-CONV

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DECISION

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The Claims Board held a hearing on this matter on March 16, 2016. Claimant, Raynard R. Jackson, appeared by phone. The Milwaukee County District Attorney's Office appeared by phone in opposition to Jackson's claim.

Background

This is a claim for Innocent Convict Compensation pursuant to § 775.05, Wis. Stats. The claim relates to Jackson's 2004 conviction for Felon in Possession of a Firearm, Carrying a Concealed Weapon, and Obstruction of an Officer. Jackson states he is innocent of the weapons-related charges. He requests the maximum reimbursement of \$25,000 for the six years and three months he served in prison.

Claimant's Facts and Argument

Jackson states that on March 25, 2003, he and a companion, Morris Rash, saw a police car pass them as they entered a store. When they exited the store, the squad turned around and followed them as they walked down the sidewalk. Jackson states that he and Rash ran from the officers because they were both subject to outstanding warrants. Jackson states that Officer Lough chased him but that he was apprehended by Officer Dodd. Jackson states that he did not have a gun. Officer Awadallah apprehended Morris Rash.

Jackson alleges that this encounter involved a "rogue" group of District 3 officers: Awadallah, Lough, Dodd, and Dineen, who had a history of framing individuals for crimes and other misconduct. Jackson notes that the prior District 3 Captain had been relieved of command for sending a memo that encouraged officers to make "the thugs" lives "even more miserable than before" after an officer was transferred out of District 3 due to misconduct. Jackson alleges that these four officers planted a gun at the scene of his arrest and falsified reports in order to frame him.

Jackson states that the officers lied about many elements of the arrest. He specifically alleges: 1) there is no record of the “drug dealing complaint” to which the officers said they were responding; 2) the officers saw Jackson and Rash enter and leave the store; therefore, they were clearly not loitering; 3) Officer Lough wrote contradictory reports, one indicating that he picked up the gun while pursuing Jackson and one indicating that he went back for the gun after he apprehended Jackson; 4) the gun the officers claim Jackson discarded was the exact same type and caliber issued to police officers, was not registered or reported stolen, and did not have Jackson’s fingerprints on it; 5) Officer Lough testified at trial that he personally inventoried the gun into evidence, but police records show that it was Officer Awadallah who did so, more than five hours after Jackson’s arrest; 6) Officer Lough reported that he was present for the arrests of both Jackson and Rice, even though the two men fled in different directions and were arrested in different locations; 7) contrary to Officer Lough’s report, Jackson was arrested by Officer Dodd, and Lough had no contact with Jackson; 8) Officer Dodd struck Jackson while he was handcuffed, and took Jackson’s watch and money, neither of which was ever inventoried.

In February 2005, Jackson was convicted of possession of a firearm by a felon, carrying a concealed weapon, and resisting an officer.

Jackson’s initial post-conviction counsel, Attorney Lucius, filed an appeal in September 2005. In March 2005 Officer Awadallah was charged in federal court for threatening to plant evidence on a suspect in an unrelated case. Despite the fact that the charges against Officer Awadallah were prominently reported in multiple Milwaukee-area and statewide media sources while the post-conviction motion was still pending, Lucius failed to raise the issue in the motion.

In addition, in 2006 while Jackson’s appeal was pending, the court of appeals released its decision in *State v. Missouri*. The court granted a new trial to Missouri due to the trial court’s refusal to admit evidence of other acts of misconduct involving Officers Awadallah, Lough, Dodd, and Dineen. Despite the fact that these were the same four officers involved in Jackson’s arrest, Lucius failed to amend his motion. Jackson’s post-conviction motion was denied by the trial court.

In 2007, Jackson’s new attorney, Mr. Gould, filed a motion for ineffective assistance of counsel based on Lucius’s failure to raise issues related to the *Missouri* decision and newly discovered evidence—Officer Awadallah’s conviction on federal civil rights charges. This motion was also denied by the trial court.

Attorney Gould appealed the denial and in December 2008 the court of appeals ordered a hearing on the issues. In July 2009, the court found that attorney Lucius’s failure to bring up Officer Awadallah’s prosecution and the *Missouri* decision constituted ineffective assistance of counsel. The court vacated both gun-related convictions and remanded those charges for a new trial. In August 2009 the State dismissed the gun-related charges.

Jackson believes that the officers involved in his arrest have no credibility, which was proven by Awadallah's conviction and the reversal of numerous other convictions based on the same type of misconduct by the same officers involved in Jackson's arrest.

Jackson points out that he would have only served 9 months for the conviction for obstruction and requests the maximum reimbursement for the six years and three months he spent in prison.

#### DA's Response and Argument

The DA believes Jackson has failed to meet the standard of providing clear and convincing evidence that Jackson was innocent and recommends denial of this claim.

The DA states that neither the court proceedings nor Jackson's submissions establish that he was actually innocent of the crimes for which he was convicted, and that the State's decision to dismiss the gun-related charges was not based on a determination that he was innocent of those charges.

The DA notes that the court of appeals did not find that there was merit to Jackson's underlying claim, but only that his motion was sufficient to warrant a hearing. At the July 2009 hearing, Judge Martens found that Awadallah's conviction and the *Missouri* decision "at least as it relates to Awadallah" created a reasonable probability that the trial result would have been different due to Awadallah's role in the chain of custody of the recovered gun. Judge Martens vacated the gun-related charges and ordered a new trial on those counts; however, the obstruction charge was not overturned.

The DA points to the fact that Judge Martens' ruling was limited to Officer Awadallah and the chain of custody issue. Significantly, Judge Martens: 1) did not find that Jackson was innocent in fact; 2) did not find that any officer engaged in misconduct; 3) did not find that the evidence would be insufficient to establish guilt at retrial; and 4) did not determine that *Missouri* evidence was admissible to any officer other than Awadallah.

The DA states that it moved to dismiss the gun-related charges because the evidence would not have been as strong at retrial, since Awadallah was not available to establish chain of custody. That, and the possibility that *Missouri* evidence would be admitted, raised the question of whether the State could prove the charges beyond a reasonable doubt. In addition, Jackson had served most, if not all, of his maximum sentence. Therefore, the State moved to dismiss the outstanding charges.

When asked about the current status and credibility of Officer Lough, the DA reported that Officer Lough was still working as an officer with the Milwaukee Police Department. The DA also reported that Officer Lough's credibility had never been

contested like Officer Awadallah nor had Officer Lough ever been charged with similar crimes.

#### Discussion and Conclusion

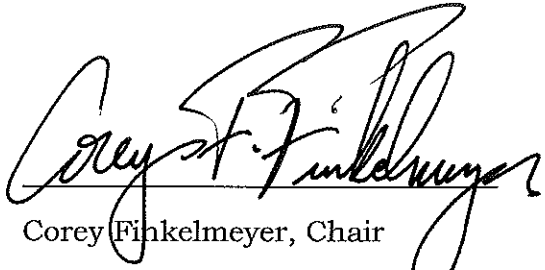
Under the standards of Wis. Stat. § 775.05(3), the Claims Board must determine whether or not the evidence is clear and convincing that the petitioner was innocent of the crime for which he was imprisoned.

The primary evidence provided by Jackson in support of his petition was that the court of appeals vacated the gun related charges due to ineffective assistance of counsel. However, based on long-standing precedent, the Claims Board does not automatically equate such a vacation with innocence. A claimant like Jackson must prove his innocence by clear and convincing evidence, whereas in order to obtain a vacation based on ineffective assistance of counsel he only had to make a showing that there was a reasonable probability that the trial result would have been different if he had had more effective counsel. These are two very distinct standards with different burdens of proof and cannot be conflated. Therefore, the vacation, standing alone, does not mean that a claimant has proven his innocence by clear and convincing evidence.

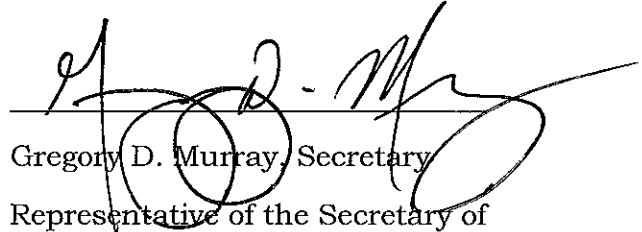
Aside from the vacation noted above, Jackson cites the significant credibility problems and bad acts of Officer Awadallah, as evidence to substantiate that he was innocent of the charges and that essentially the gun charges were entirely fabricated. While it is true that Officer Awadallah has severe credibility problems and based on the record should not be believed, it was really Officer Lough who was the primary officer on the arrest. The DA stated that Officer Lough was still working as an officer with the Milwaukee Police Department, his credibility had never been contested like Officer Awadallah's, and Officer Lough had never been charged with similar crimes. As such, and based on the record before this Board, there is insufficient evidence to establish the conspiracy alleged by Jackson that all four officers engaged in a deliberate fabrication of his gun charges. In the absence of such evidence, the Board has no factual basis on which to find Jackson innocent of the charges to a clear and convincing standard.

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 Jackson was innocent of the 2004 conviction for Felon in Possession of a Firearm and Carrying a Concealed Weapon 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



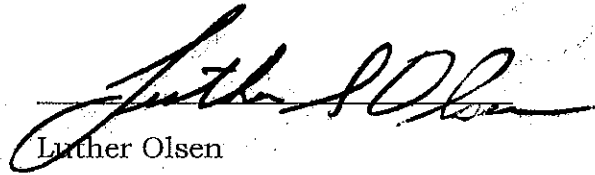
Corey Finkelmeyer, Chair  
Representative of the Attorney General



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



Katie E. Ignatowski  
Representative of the Governor



Luther Olsen  
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