
STATE OF WISCONSIN CLAIMS BOARD

CLAIM OF: DARYL DWAYNE HOLLOWAY

CLAIM NO. 2021-050-CONV

Notice of Appeal Rights

This is a final decision of the Wisconsin Claims Board.

Any person aggrieved by this decision has a right to petition for judicial review in circuit court as provided in Wis. Stats. §§ 227.52 and 227.53. Any petition must be filed in court and served on the Board within 30 days of service of the decision. The time to file and serve a petition runs from the date the final decision is mailed. The petition shall name the Wisconsin Claims Board as the respondent.

Any person aggrieved may also file a petition for rehearing with the Board under Wis. Stat. § 227.49(1); that petition must be received by the Board within 20 days of the service of this decision.

This notice of appeal rights is provided pursuant to Wis. Stat. § 227.48.

DECISION

The Claims Board considered this matter on March 22, 2022. Attorney Raymond Dall'Osto and claimant Daryl Dwayne Holloway appeared at the hearing. Deputy District Attorney Matthew Torbenson appeared on behalf of the Milwaukee County District Attorney's Office.

Background

This is a claim for Innocent Convict Compensation pursuant to Wis. Stat. § 775.05. The claim relates to Holloway's 1993 conviction for two sexual assaults that took place in September 1992. Holloway states he is innocent of these crimes. He requests the maximum statutory reimbursement of \$25,000, plus \$100,110.13 for attorneys' fees. He also requests that the Claims Board recommend to the legislature additional compensation in the amount of \$975,000 for the 24 years he spent in prison.

Claimant's Facts and Argument

Holloway served 24 years in prison after being convicted of two home invasion sexual assaults. The first assault took place on the morning of September 2, 1992 when a man entered the home of MG through an open window, grabbed a knife and assaulted her. MG never saw his face, which was covered by a scarf. Phone records from that morning show that at 7:10 AM, MG called for help and at 7:15 AM, Holloway made a phone call at from his home, five miles away from the location of the assault.

The second assault occurred around 11:30 PM on September 26, 1992. A man with a knife entered GD's bedroom and assaulted her. GD never saw his face because the room was dark. Holloway's mother and his neighbor testified that from early in the evening until about midnight Holloway and the neighbor were at Holloway's mother's house, which was four miles away from the assault. Holloway's mother testified that she heard them leave around midnight. The neighbor testified that Holloway drove him home and that they talked for a while outside. Holloway then drove directly home to his fiancée, and they went to bed.

The perpetrator spoke to both victims during the assaults and MG and GD provided similar descriptions of the perpetrator's height and build. Both victims were shown photo arrays containing a picture of Holloway and both stated they did not recognize anyone in the photos as their assailant. On September 30, 1992, MG and GD simultaneously observed a live lineup of five men, including Holloway. Holloway was the only individual who appeared in both the photo arrays and the lineup and was one of only two people in the lineup matching the physical description given by the victims. The men in the lineup were told to repeat words uttered by the perpetrator during the assaults. Both victims then identified Holloway as their assailant, MG based on the sound of Holloway's voice and GD based on the sound of his voice and his general build.

There was no physical evidence linking Holloway to the assaults and no DNA testing was conducted on the evidence from either crime scene. A State Crime Lab expert testified at trial that the semen from GD's bed originated from a person with blood type AB or B non-secretor, however, Holloway is a type A secretor and therefore excluded as the source of that semen. Despite the telephone records and credible alibi witness testimony establishing that he was elsewhere at the time of the assaults, Holloway was convicted and sentenced to 120 years in prison.

Holloway continued to maintain his innocence and pursued post-conviction relief, including multiple rounds of DNA testing. 2016 DNA testing of the evidence from MG's assault conclusively excluded Holloway as the source of that DNA and also excluded MG's husband, confirming that some other unknown male must have been MG's assailant. Although GD remains adamant that Holloway was her assailant, the

evidence shows that her identification of Holloway, while made in good faith, was mistaken. Holloway notes that courts have recognized a growing body of evidence related to eyewitness misidentification and the unreliable nature of simultaneous lineups and voice identifications.

Based on the results of the post-conviction DNA testing and after a review of the case, the DA joined the Innocence Project in recommending that the court vacate Holloway's convictions and dismiss the charges. On October 4, 2016, Judge Wagner, who had also presided over Holloway's original trial, vacated the convictions and dismissed the charges with prejudice. Judge Wagner's order found Holloway innocent as a matter of law. Holloway believes that Judge Wagner's order, along with the DA's decision to file no objection to this claim, establishes his innocence and eligibility for compensation pursuant to Wis. Stat. § 775.05.

Holloway notes that Wisconsin has the lowest annual compensation rate of any state that provides wrongful conviction compensation. Recognizing the inadequacy of that compensation, the Wisconsin Legislature has proposed several bills to increase compensation, including a 2016 bill providing \$50,000 per year with a maximum of \$1,000,000. Holloway is the longest wrongfully convicted person released in Wisconsin to date. His imprisonment during the most productive earning years of his life has caused him significant and measurable economic damages. He suffered the loss of multiple relationships and has ongoing psychological and emotional trauma. An award of \$25,000 would compensate Holloway at the rate of \$1,042 per year, or \$2.85 per day for 24 years of wrongful imprisonment. Holloway therefore requests that the board grant him the \$25,000 maximum plus \$100,110.13 attorneys' fees and also recommend \$975,000 additional compensation to the Wisconsin Legislature. This additional amount would provide more just and adequate compensation given the significant losses suffered by Holloway and compensate him in an amount close to what he would have received under the 2016 compensation reform bill. At a minimum, Holloway requests recommendation of an additional \$5,000 per year for each of his 24 years of imprisonment, \$120,000.

DA's Response and Argument

The Milwaukee County District Attorney's Office takes no position on whether Holloway should be compensated. The DA notes that the 2016 DNA analysis only related to the first assault and that the second victim remains adamant that Holloway was her attacker. Also, in relation to the second assault, the DA notes that two witnesses testified at trial that they saw Holloway in the area just prior to the assault. One witness saw him at party at a house on the same block as GD's apartment and that Holloway's clothing looked as though he'd been crawling through bushes. The DA also notes that there was a fifth, uncharged count related to a burglary that occurred

several days after GD’s assault. In that incident, the victim came home and found a man in her house, who grabbed her purse and fled. One of the items reported missing was a jewelry box that was later recovered in the victim’s yard with Holloway’s fingerprints on it.

Upon receiving the 2016 DNA results, the DA’s Office conducted a detailed review of the investigation into each assault and determined that counts 1 and 2 must be dismissed based on the newly discovered evidence. The state’s case on counts 3 and 4 of the charges relied on the similarities between the crimes and each victim’s identification of Holloway during a lineup that did not follow best practices. Because there was no other evidence connecting Holloway to GD’s assault, the DA concluded it could not meet its burden of proof on counts 3 and 4 and moved the court to dismiss all charges.

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.

Based on the Claimant’s facts and arguments above, the Board concludes and finds that the evidence is clear and convincing that Holloway was innocent of the crimes for which he was imprisoned. Accordingly, the Board concludes that compensation in the statutory maximum amount of \$25,000, plus \$100,110.13 for attorneys’ fees shall be awarded from the Claims Board appropriation Wis. Stat. § 20.505(4)(d).

The Board also believes that given the facts and circumstances presented, the maximum amount of compensation allowed under Wis. Stat. §775.05 is not adequate in this case. The Board therefore also recommends to the Legislature an additional payment be made to the claimant in the amount of \$975,000. Vote: 5-0

Dated at Madison, Wisconsin this 14th day of April, 2022

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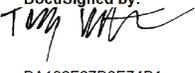
Corey Finkelmeier, Chair
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