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STATE OF WISCONSIN CLAIMS BOARD

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CLAIM OF: VONAIRE WASHINGTON  
CLAIM NO. 2021-017-CONV

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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. Stat. §§ 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.

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DECISION

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Background

This is a claim for Innocent Convict Compensation pursuant to Wis. Stat. § 775.05. The claim relates to Vonaire Washington's 1991 conviction for Armed Robbery as Party to a Crime. Washington spent approximately 11 years in prison and requests the maximum statutory reimbursement of \$25,000 and attorney's fees and costs in the amount of \$53,000. Washington also requests that the Claims Board recommend to the legislature additional compensation in the amount of \$149,922,000.

Claimant's Facts and Argument

Washington provided the following facts and arguments in support of this claim for compensation.

On July 15, 1990, the Jolly Skot Tavern in Milwaukee was robbed by three men shortly after 4 PM. Witnesses described one of the men as carrying a sawed-off shotgun and wearing a shower cap and a light blue jacket. Approximately 30 minutes later, a man (E.K.) was robbed by a suspect fitting the same description.

Washington alleges that on July 15, 1990, he and several other people were watching movies at a friend's house from 1 PM to 6 PM. Upon leaving the friend's house Washington's car would not start so he asked for a ride from two other men, Clifford Beasley and Leather Lobley. Shortly after they departed, police pulled them over and searched the vehicle, finding two shotguns inside a bag. The officers took Washington and the other men to the Jolly Skot Tavern to be viewed by witnesses of the robbery. Witnesses identified Washington as the man with the sawed-off shotgun from the robbery and he was taken into custody.

Washington alleges that he did not know there were weapons in the car. Lobley testified on behalf of Washington at the hearing before the Claims Board and stated that earlier in the evening before picking up Washington, he and Beasley saw a friend, Shorty G, walking with a duffle bag. Lobley said that Shorty G asked to put the bag in their car. Lobley stated that he took the bag to help out his friend and had no idea that there were guns in the bag.

Washington believes that both the vehicle stop and the impromptu lineup at the Jolly Skot Tavern were fatally flawed. He argues that police had no probable cause to stop and search the vehicle because they did so based on nothing but an anonymous tip that there were men with guns in a burgundy Mazda. He also argues that it was so dark inside the tavern where the lineup took place that witnesses could not have seen him well enough to accurately identify him as one of the perpetrators of the robbery.

Two days later, a man named James Johnson was arrested while in possession of personal property from three similar robberies, including the robbery of E.K. Both Washington and James Johnson were charged with the Jolly Skot Tavern Robbery. Washington points to the fact that James and his brother, Walker Johnson, were linked to a number of similar robberies involving the use of a sawed-off shotgun and a man wearing a shower cap, some of which occurred while Washington was in custody. Washington alleges that while he and James Johnson were in custody, he overheard James say that Walker Johnson was going to commit more robberies in order to confuse the police. Washington believes that James and Walker Johnson conspired together to blame him for the Jolly Skot robbery. He also believes that the strong resemblance between the Johnson brothers caused witnesses in the Jolly Skot and other robberies to misidentify the brothers. Washington contends that Walker Johnson was the man with the sawed-off shotgun in both the Jolly Skot Tavern robbery and the robbery of E.K.

Washington believes that the police were angry with him for exercising his right to counsel and notes that Lobley and Beasley, who did not exercise that right, were released after giving statements. He also alleges that the police were upset because a January 1990 robbery charge against Washington had been dismissed and that they falsified reports and manipulated evidence in retaliation. Washington alleges that the police and prosecutor concealed the fact that witnesses to the Jolly Skot Tavern robbery identified both Washington and James Johnson as the man holding the sawed-off shotgun. In addition, he alleges that the prosecutor knowingly withheld exculpatory evidence linking James and Walker Johnson to similar robberies that occurred that summer.

Washington maintained his innocence throughout his trial and post-conviction appeals. In July of 2000, Washington's conviction was set aside based on ineffective assistance of counsel and remanded for retrial. Washington refused a plea deal offered by the prosecutor and the charges against him were dropped in March 2001. Washington argues that prosecutors did not retry him because they knew they would not be able to secure a conviction.

Washington requests the statutory maximum compensation of \$25,000. He also requests recompense for \$53,000 of pre- and post-conviction attorney's fees which were paid by his father and grandmother, both of whom are now deceased. Finally, Washington requests that the board recommend to the legislature an additional award of \$149,922,000 because his wrongful conviction caused him great physical and mental suffering, destroyed his family relationships, and shattered his life into as many pieces.

#### DA's Response and Argument

The Milwaukee County District Attorney's Office deferred to the Claims Board to determine if any compensation to Washington was appropriate but provided the following facts regarding Washington's claim for compensation.

Washington's claim references charges brought in two robberies. In January 1990, Washington was charged with Armed Robbery as Party to a Crime with a habitual criminality enhancer for a robbery that occurred at Friendly Foods, Case No. 90CF900414. The DA notes that those charges were dismissed at the preliminary hearing stage because an eyewitness recanted their identification, another suspect was identified, and prosecutors found evidence supporting Washington's alibi.

In July 1990, Washington was charged with Armed Robbery as Party to a Crime and Felon in Possession of a Firearm with a habitual criminality enhancer for the Jolly Skot Tavern Robbery, Case No. 90CF902433. A jury trial took place in June 1991 and Washington was found guilty of all three felony charges and sentenced to prison. The

Wisconsin Court of Appeals upheld Washington's conviction in 1993 and again in 2000. The US District Court later set aside the conviction due to ineffective assistance of counsel and the US Court of Appeals upheld that decision.

The DA argues that its decision not to retry Washington was based on a candid assessment of retrying the case 11 years after the first trial, not because the DA believed that Washington was innocent. The DA notes that by 2001, only one citizen witness to the crime was still available and, because there were some issues related to her identification of Washington, the DA did not believe it could meet its burden of proof with only that witness. The DA states that if the prosecutor reviewing the case for retrial had any concerns that Washington was innocent, it would have been standard practice for her to note those concerns in the file and she did not do so. The DA notes that Washington would have received 11 years credit for time served if reconvicted, which likely also played a part in the decision not to retry the case.

The DA is satisfied that prosecutors handled both of these cases with the appropriate levels of discretion and dispatch. In the first case, charges were correctly dismissed when the nature of the evidence changed and in the second case, the State effectively convinced a jury of Washington's guilt. Although Washington's conviction was set aside after extensive post-conviction judicial review, the DA notes that no court ever made a determination that Washington was innocent of the charges for which he was convicted.

#### 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 or she was imprisoned.

Washington's conviction was overturned based on ineffective assistance of counsel, not on any finding of innocence. The Claims Board has long held that a finding of ineffective assistance of counsel, without more, is insufficient to demonstrate that the evidence of innocence is clear and convincing.

Washington presents the Claims Board with alternative theories attempting to link the crime to other individuals, however, the evidence supporting such theories is inconclusive and therefore does not present affirmative evidence of innocence. For example, an affidavit presented from Walker Johnson that was submitted to a Milwaukee County Circuit Court on November 12, 1998 in the case of James Johnson (Case No. F-902433) that stated that Washington was wrongfully convicted of the Jolly Scott Tavern robbery (see Walker Johnson Affidavit dated November 12, 1998), directly contradicts previous statements Walker Johnson made to investigators on August 28, 1990 (see Walker Johnson statement to TW Investigations dated August 28, 1990).

The veracity of the Walker Johnson affidavit was never evaluated by a court, and Walker Johnson’s testimony was not referenced in the context of the DA’s decision not to re-try the case, leaving the credibility of Walker Johnson’s statements untested, and leaving the Board unable to conclude that Walker Johnson’s statements represent clear and convincing evidence of Washington’s innocence.

In addition, during the hearing before the Board, Washington cast some doubt on his own alibi, stating that the times he gave for watching movies with his friends were “vague” and that he could not be sure exactly where he was at the time of the robbery. Washington did not present any additional alibi witnesses to the Board at the hearing, but did submit as part of his written materials the alibi testimony of Gola Richardson that took place in 1992 in the context of the post-conviction proceedings regarding Washington’s claim of ineffective assistance of counsel. The Board notes, however, that Ms. Richardson was only cross-examined by the state for purposes of determining whether she had been contacted and was available to testify at the time of Washington’s initial trial, and not regarding the specifics of the testimony she would have given about Washington had she been called. See Trial Transcript, December 22, 1992, pages 40-50. Therefore, while the testimony was relevant to Washington’s claim of ineffective assistance, insofar as it shows that the witness would have testified favorably to Washington, no determination of its veracity or the witness’s credibility have been made, and the Board believes this also does not represent clear and convincing evidence of Washington’s innocence.

The Board is not required to take all evidence in the light most favorable to Washington, rather it must determine whether the evidence as it has been presented to it is clear and convincing that Washington was innocent of the crime for which he was imprisoned. Based on the facts and arguments presented above, the Board determines that it is not. Accordingly, the Board concludes that Washington is not entitled to compensation under Wis. Stat. § 775.05. Vote: 5-0.

**Dated at Madison, Wisconsin this 14th day of June, 2023**

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Corey Finkelmeier, Chair  
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