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STATE OF WISCONSIN CLAIMS BOARD

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CLAIM OF: LAVONTAE STINSON

CLAIM NO. 2023-036-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

Claimant, Lavontae Stinson, filed a claim seeking Innocent Convict Compensation pursuant to Wis. Stat. § 775.05. Stinson claims that he was imprisoned for more than six years for his 2017 conviction for attempted armed robbery and first-degree reckless injury. Stinson further claims that he is innocent of the crimes for which he was imprisoned, and he seeks statutory compensation in the amount of \$25,000 and attorney's fees in the amount of \$70,030. Stinson also requests that the Claims Board recommend to the Legislature additional compensation in the amount of \$275,000, for a total claim of \$370,030.

### Claimant's Facts and Argument

In support of his claim for compensation, Stinson submitted a claim form and the following materials:

1. Statement in Support of Claim with the following exhibits:
  - a. Ex. A: Unnotarized and unwitnessed document purporting to be a declaration and confession of Deyontae Stinson;
  - b. Ex. B: Four pages of documents purporting to be a February 2019 "Facebook Conversation" between Darius Stevenson and Shamika Bounds;
  - c. Ex. C: March 23, 2022 Offer of Proof of the State of Wisconsin filed in Milwaukee County Circuit Court Case No. 15-CF-5385;
  - d. Ex. D: August 2, 2022 Order of the Honorable David A. Feiss vacating the conviction and sentence entered in Milwaukee County Circuit Court Case No. 15-CF-5385;
  - e. Ex. E: Transcript from a December 12, 2022 Motion Hearing in Milwaukee County Circuit Court Case No. 15-CF-5385;
  - f. Ex. F: Transcript from a January 5, 2023 Status Conference in Milwaukee County Circuit Court Case No. 15-CF-5385;
  - g. Ex. G: February 11, 2016 newspaper article from The Capital Times; and
  - h. Ex. H: August 2, 2023 article from the Wisconsin State Bar.
2. Reply to the December 13, 2023 letter from the Milwaukee County District Attorney's Office.

Stinson did not request a hearing.

In his Statement in Support of his claim, Stinson argues the following:

On August 14, 2015, his brother, Deyontae Stinson and Deyontae's close friend Darius Stevenson attempted to rob a Quick Pick store in Milwaukee, Wisconsin. Both men covered their heads with t-shirts before entering the store, where Darius acted as lookout while Deyontae demanded money. In the course of the robbery attempt, Deyontae shot both the store clerk and Jerry Miller, a customer in the store who attempted to intervene. After shooting Miller, Deyonte and Darius fled the store.

Deyontae and Darius then drove to the home of Deyontae's mother, Flahleesha Stinson. Ms. Stinson was hosting a barbecue attended by many Stinson family members, including Lavontae Stinson, his two sisters, his son, and his son's mother. Deyontae spoke to Ms. Stinson while Darius stayed near the car and then both men left. Several people saw Deyontae and Darius's arrival and departure and thought it was odd that the men did not join the party. Lavontae and other Stinson family members knew Darius only as "Don" and did not know his real name.

During the investigation, Miller and the store clerk told police that they did not see the perpetrators' faces and could not make an identification. Miller told police that the lookout had dreadlocks and was taller than the shooter. Several witnesses outside of the store saw Deyontae and Darius flee the scene. Those witnesses provided a description of the vehicle and described the man in the passenger seat as having short dreads.

When interviewed, Stinson family members told police about Deyontae's friend "Don" and provided a photo of him. Lavontae explained what happened at the barbecue and also implicated "Don," who he described as having 6-inch dreads. Lavontae had shoulder length dreads with gold tips at the time of his arrest.

Lavontae argued in a post-conviction filing that his trial lawyer, Thomas Harris, was ineffective and clearly did not believe Lavontae was innocent. At Lavontae's trial, Miller testified that the lookout had a ponytail of long dreads with blond tips, which was inconsistent with his original statement to police. Harris failed to challenge Miller's testimony even though there was evidence that Miller had been influenced by information presented at Deyontae's trial months earlier. Harris also failed to introduce video evidence that would have impeached Miller's testimony. Harris failed to file a *Denny* motion, which would have allowed him to argue that Darius Stevenson was the true lookout. Harris failed to interview Deyontae before calling him to testify. Deyontae's testimony was clearly not credible and therefore damaging to Lavontae. Harris commented several times during the trial that he needed to leave by 2:15 on Friday to go to a wedding. Although the parties agreed to reconvene the following Tuesday, it appears that Harris simply decided to end Lavontae's defense early, because he rested without presenting any of Lavontae's alibi witnesses.

Lavontae's post-conviction motion also sought a new trial based on newly discovered evidence. Included in the newly discovered evidence presented by Lavontae was an assertion that Deyontae Stinson had since confessed to the crime and named Darius Stevenson as his accomplice. A Facebook Messenger exchange was also presented in which Darius Stevenson purportedly admitted to his part in the robbery and expressed remorse that Lavontae was blamed for the crime. In addition, the discovery of Darius's real name led to booking photos showing that Darius had short dreads at the time of the robbery, which matched Miller's original description and the description of the witnesses who saw the perpetrators flee the scene. The State agreed to vacate Lavontae's

conviction because there were valid grounds for a new trial. Lavontae was released on bond and the DA eventually dismissed the charges in January 2023.

Lavontae Stinson claims that he lost six years of his life during which he was denied the ability to make a living, grow with his family, and raise his child. He claims that he suffers ongoing psychological and emotional challenges stemming from his wrongful imprisonment. He requests that the Claims Board award him the \$25,000 statutory maximum, plus \$70,030 for attorney's fees and costs. He further requests that the Claims Board recommend to the legislature an additional award of \$275,000 to adequately compensate him for his significant economic, emotional, and personal losses.

#### DA's Response and Argument

In its November 21, 2023 response, the Milwaukee County District Attorney deferred to the Claims Board to determine if any compensation for Stinson is appropriate. The DA did not dispute the procedural history as set forth by Stinson and the DA stipulated that Stinson did not receive a fair trial due to ineffective assistance of his trial counsel. The DA further asserted that he reviewed the case upon remand and decided not to retry Stinson because the State could not meet its burden of proof. The DA also offered that the additional information received from Stinson's post-conviction counsel cast some doubt on whether Stinson was involved at all in the crimes for which he was sent to prison.

#### Discussion and Conclusion

Pursuant to Wis. Stat. § 775.05(3), the Claims Board must hear the evidence on the petition and determine whether the evidence is clear and convincing that Stinson is innocent of the crimes for which he was imprisoned.

Although Stinson makes various arguments supporting his claim of innocence, the Board concludes that he did not provide sufficient credible and substantial evidence to prove his innocence to a clear and convincing standard. Exhibit A to Stinson's petition purports to be a November 31, 2018 confession by Deyontae Stinson (Lavontae Stinson's brother). Among other things, the document says that Lavontae Stinson "did not have anything to do with this case," and that Lavontae Stinson should be let out of prison because Lavontae "did not know anything about it." But the Board has been provided with nothing to establish that Exhibit A is what it purports to be. Moreover, the credibility of Deyontae Stinson is questionable given his prior testimony at Lavontae Stinson's trial.

The Board has the same concerns regarding Exhibit B which purports to be screen shots of Facebook messages between Darius Stevenson, the individual who Lavontae Stinson argues was the true "co-actor" in the commission of the crimes, and another individual, Shamika Bounds. Stinson argues that in the messages Darius Stevenson admits that

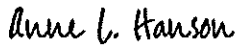
he was the guilty party. But again, there is nothing in the record to establish the authenticity or veracity of Exhibit B. Stinson points out that the “Facebook profile picture matches the booking photos of (Stevenson) obtained from open records and the pictures of (Stinson’s) mother provided to (his) original trial counsel.” But even if that’s true, that does not necessarily prove that the Facebook account belonged to Stevenson, or that the messages were written by Stevenson.


In his statement in support of his petition, Stinson made several references to multiple alibi witnesses who his trial counsel could have and should have called to prove his innocence. Yet, in his submission to the Board, Stinson did not provide testimony or statements from any of these individuals for the Board to consider.


Finally, while Stinson correctly points to the fact that his conviction was vacated, it must be emphasized that the court vacated the conviction because Stinson received ineffective assistance of counsel. Wisconsin Stat. § 775.05 does not provide compensation to individuals who simply establish that their convictions have been overturned, it provides compensation to individuals who establish their *innocence* by clear and convincing evidence. The Board has never automatically equated vacation of a conviction with innocence. Here, Stinson must prove his innocence by clear and convincing evidence, whereas to obtain a vacation based on ineffective assistance of counsel he only had to show there was a reasonable probability that the result would have been different if he had had more effective counsel. These are two very distinct standards with different burdens of proof and they cannot be conflated.


Based on the written submissions, the Board concludes and finds that the evidence is not clear and convincing that Lavontae Stinson was innocent of the crime for which he was imprisoned. Accordingly, the Board concludes that Stinson is not entitled to compensation under Wis. Stat. § 775.05. Vote: 5-0. *[Chair R. Duane Harlow participated in discussion and deciding this claim at the meeting on April 30, 2024. He is no longer a member of the Board so his signature does not appear below.]*

**Dated at Madison, Wisconsin this 23rd day of July, 2024**

DocuSigned by:  
  
Anne L. Hanson, Secretary  
Representative of the Secretary of  
Administration

DocuSigned by:  
  
Mel Barnes  
Representative of the Governor

DocuSigned by:  
  
Eric Wimberger  
Senate Finance Committee

DocuSigned by:  
  
Alex Dallman  
Assembly Finance Committee