
STATE OF WISCONSIN CLAIMS BOARD

CLAIM OF: DANNY WILBER

CLAIM NO. 2023-028-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. 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.

DECISION

Background

Claimant, Danny Wilber, filed a claim seeking Innocent Convict Compensation pursuant to Wis. Stat. § 775.05. Wilber claims that he was imprisoned for approximately 18 years for his 2005 conviction of first-degree murder. Wilber further claims that he is innocent of the crime for which he was imprisoned and seeks statutory compensation in the amount of \$25,000 and attorney's fees in the amount of \$192,149.16. Wilber also requests that the Claims Board recommend to the Legislature additional compensation in the amount of \$875,000, for a total claim of \$1,092,149.16.

Claimant's Facts and Argument

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

1. Petition for Compensation for Wrongful Imprisonment of an Innocent Person with the following exhibits:
 - a. Exhibit A: Autopsy Report;
 - b. Exhibit B: Dr. Siegesmund Affidavit (with Annotated Crime Scene Diagram);
 - c. Exhibit C: Photograph of Bullet Fragments;
 - d. Exhibit D: Medical Examiner's Testimony;
 - e. Exhibit E: Photograph of Crime Scene;
 - f. Exhibit F: District Court Decision Vacating Conviction;
 - g. Exhibit G: Dr. Thomas Affidavit;
 - h. Exhibit H: Torres Affidavit;
 - i. Exhibit I: Seventh Circuit Decision;
 - j. Exhibit J: Holloway Claims Board Decision;
 - k. Exhibit K: Criminal Case Attorney Affidavits; and
 - l. Exhibit L: Claims Board Petition Attorney Affidavit.
2. Reply to the November 21, 2023 letter from the Milwaukee County District Attorney's Office.

Wilber did not request a hearing.

In his petition, Wilber indicates that in the early morning hours of January 31, 2004, a large group of people were attending an "after bar" party at the home of David Diaz, during which Diaz was shot in the back of the head and killed. Wilber claims that immediately prior to the shooting, Diaz was standing in the doorway between the living room and kitchen facing into the kitchen where an altercation was taking place between Wilber, Richard Torres, and Jeranek Diaz (no relation). When the shot rang out, Diaz's body fell face-down into the kitchen and everyone in the kitchen, including Wilber, panicked and fled the house.

The Medical Examiner determined that Diaz was shot in the back of the head at close range (2-3 inches) and died instantly. According to Wilber, the position of the body, bullet fragments, and blood spray all support the conclusion that Diaz was shot from behind while facing into the kitchen. Wilber points to post-conviction analyses by two

forensic experts, who concluded that Diaz was shot at close range from behind while facing into the kitchen. One expert stated that it was “very unlikely that Mr. Diaz would have done a 180° turn after sustaining such a gunshot wound.” The other expert concluded that “[i]t was not possible for Wilber to have committed the murder in this case” and that the prosecution’s theory was “inherently incredible” and “conflict[ed] with the uniform course of nature, and with the fully established physical facts of this case.”

Police focused on Wilber as their sole suspect based on statements made by individuals who were at the scene. Wilber alleges that detectives ignored or discredited evidence pointing to multiple other plausible suspects and deliberately omitted from the police reports witness statements supporting his innocence. Even though the kitchen was crowded with people, Wilber asserts that not a single eyewitness testified that they saw Wilber shoot Diaz. Instead, Wilber states that several testified that Wilber was engaged in the altercation with Torres and Jeranek Diaz at the time of the shooting and others stated that they saw Wilber react to the gunshot as though he was afraid that he’d been shot (flinching, ducking, patting himself down). According to Wilber’s claim, several other witnesses stated that there were multiple individuals in the living room behind David Diaz at the time of the shooting, including someone who had been seen with a gun that night and had had a recent confrontation with Diaz.

Wilber argues that all the physical and medical evidence introduced at trial contradicted the prosecution’s theory that Wilber was the killer, including that eyewitnesses had stated that Wilber was in front of Diaz at the time of the shooting. To explain how Wilber could have shot Diaz in the back of the head while standing in front of him, a detective testified that Jeranek Diaz had told him that David Diaz turned around to leave the kitchen just before he was shot. The detective speculated that Diaz turned back into the kitchen after being shot, which Wilber asserts was contrary to the Medical Examiner’s conclusion. Jeranek Diaz testified under oath that he made no such statement to the detective. Wilber asserts that no other eyewitness testimony supported the detective’s account, and the prosecution provided no expert testimony to support the detective’s theory that Diaz was able to turn around after being shot.

The prosecution’s main witness, Richard Torres, testified that he assumed Wilber killed Diaz because he saw Wilber with a semi-automatic pistol moments after the shooting (bullet fragments found at the scene were from a revolver, not a semi-automatic). Torres later recanted his testimony in an affidavit submitted by Wilber, stating that police coerced him into falsely testifying that he saw Wilber with a gun right after the shooting.

Wilber maintained his innocence throughout his trial and fought to have his conviction overturned. He was unsuccessful in achieving post-conviction relief in state court. In 2020, a federal district court vacated his conviction, concluding that the trial judge’s decision to visibly shackle Wilber in front of the jury violated his constitutional right to a fair trial. The state unsuccessfully appealed the decision and Wilber was released on December 22, 2021 pending a possible retrial. The DA dismissed the charges against Wilber on May 27, 2022.

Wilber claims that he has suffered severe economic and psychological damages because of his wrongful conviction. He was pursuing a degree at the time of his arrest and lost critical years during which he could build a career. Wilber lost multiple relationships and struggles daily with the emotional trauma caused by his almost two decades in prison. Wilber claims that the statutory maximum of \$25,000 available to Wilber is grossly inadequate and would compensate him in the amount of \$3.80 a day for his wrongful imprisonment. Wilber notes that both the Wisconsin Legislature and the Claims Board have recognized the inadequacy of Wisconsin's statutory compensation amounts. Under legislation proposed in 2016 and 2018, Wilber would have been eligible for \$900,000 in compensation.

Wilber requests that the Claims Board award him the \$25,000 statutory maximum compensation, plus \$192,149.16 for attorney's fees. Because he believes this amount is not equitable compensation for the loss of 18 years of his life, he also requests that the Claims Board recommend to the legislature additional compensation in the amount of \$875,000.

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 Wilber is appropriate. The DA does not dispute the basis for the federal court's decision to overturn Wilber's conviction – the trial court erred in placing Wilber in shackles in full view of jury. However, the DA notes that the federal court expressly did not overturn the portion of the Wisconsin Court of Appeals' ruling that there was sufficient evidence to support the guilty verdict. Although the DA ultimately determined that it could not meet its burden of proof seventeen years after the original trial, the State never reached the conclusion that Wilber was innocent of the charges.

Discussion and Conclusion

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

In support of his position, Wilber provides post-conviction analyses by two forensic experts who concluded that the autopsy results and physical evidence from the scene support the theory that Wilber was not the shooter (Exhibits B and G). However, the Board notes that not only the original jury, but multiple reviewing courts found the same underlying evidence evaluated by his experts was sufficient to support Wilber's conviction. The fact that Wilber found two experts willing to review certain documentation and interpret the evidence in his favor does not in and of itself constitute clear and convincing evidence of his innocence.

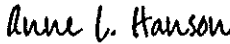
Wilber also provides a 2023 affidavit from Richard Torres stating that police coerced him into testifying he'd seen Wilber with a semi-automatic pistol shortly after the shooting (Exhibit H). However, because Torres did not appear at Wilber's hearing, the Board has no way to evaluate the credibility of that affidavit.


Finally, Wilber points to eyewitness testimony from the trial in support of his innocence but acknowledges that such testimony was called into question by the prosecution during the trial for inconsistencies with information documented in the police reports. Wilber claims, without proof, that the reports were false and fabricated by police. Again, because Wilber did not present any of these witnesses to testify at his hearing, the Board is unable to itself evaluate the credibility of the eyewitness evidence in light of the jury's verdict.


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 conviction with innocence. In this instance, although the federal court overturned Wilber's conviction because he had been visibly shackled in front of the jury, the court expressly did not overturn the appellate court's finding that the evidence was sufficient to support Wilber's conviction. The Board notes that the case against Wilber was not dismissed at the time the conviction was vacated. Although the state decided not to retry the case 17 years after the original trial, that decision was not based on any conclusion that Wilber was innocent.


Based on the written submissions, the Board concludes and finds that the evidence is not clear and convincing that Wilber was innocent of the crime for which he was imprisoned. Accordingly, the Board concludes that Wilber 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