
STATE OF WISCONSIN CLAIMS BOARD

CLAIM OF: JOSEPH MAY

CLAIM NO. 2022-004-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 July 21, 2022. Neither party requested a hearing, therefore, the Board's decision is based on the written submissions from May and 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 May's 2017 conviction for armed robbery. May requests the maximum statutory reimbursement of \$25,000. May also requests that the Claims Board recommend to the legislature additional compensation in the amount of \$2,305,528.

Claimant's Facts and Argument

In 2016, May removed items from a grocery store shelf and placed them in May's pocket. Store security personnel confronted and subdued May in the vestibule between the inner and outer doors of the store. May was arrested and charged with armed robbery because May allegedly produced a knife while resisting store security. May was convicted in 2017 and served 5 years and 36 days in prison as a result of that conviction.

May pleaded not guilty at trial and maintained innocence throughout all post-conviction appeals. May argued that May's trial attorney should have moved for a new jury pool after one prospective juror made statements about May in front of the entire jury panel. May alleged that even though that individual was not selected for the jury, the comments may have given other jurors a negative impression of May. May also argued that, because May never left the vestibule, no property was actually taken from the store and May's trial counsel should have objected to the court's refusal to instruct the jury on the lesser-included offenses of attempted armed robbery or attempted robbery.

In March 2021, Milwaukee County Circuit Court Judge Milton Childs set aside May's conviction on the grounds that May received ineffective assistance of counsel during trial. The Milwaukee County District Attorney's Office later dismissed the charges against May.

May maintains that the evidence presented at trial never supported the elements of armed robbery and that May was wrongfully convicted. May requests the maximum statutory compensation of \$25,000 for time incarcerated. May is a transgender woman and alleges verbal harassment, physical harassment, and sexual assaults while incarcerated. May states that this caused severe mental anguish and suffering, which led May to multiple suicide attempts and other types of self-harm. May therefore requests compensation in the amount of \$2,000,000 for pain and suffering. May also requests \$300,000 for ineffective assistance of counsel, \$5,000 for commissary expenses incurred while in prison, and \$528 for court costs.

DA's Response and Argument

The Milwaukee County District Attorney's Office has no information or evidence to support May's claim for innocent convict compensation. After May's conviction was set aside, the DA's Office resumed the prosecution of May for the same offense. The DA's Office notes that it decided not to proceed with the prosecution only because of the unavailability of witnesses and the loss of physical evidence, not because the DA's Office determined May was innocent of the crime.

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.

Based on the Claimant's facts and arguments above, the Board concludes and finds that the evidence is not clear and convincing that May was innocent of the crime for which May was imprisoned. Accordingly, the Board concludes that May is not entitled to compensation under Wis. Stat. §775.05. Vote: 5-0

Dated at Madison, Wisconsin this 18th day of August, 2022

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Corey F. Finkelmeyer
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Corey Finkelmeyer, Chair
Representative of the Attorney General

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Anne L. Hanson, Secretary
Representative of the Secretary of
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