# Eighty-Third Regular Session

FRIDAY, September 15, 1978.

The chief clerk makes the following entries under the above date.

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## PETITIONS AND COMMUNICATIONS

State of Wisconsin
Department of State

September 5, 1978.

To the Honorable, the Senate

Senators:

I have the honor to transmit to you pursuant to s. 13.67 (2), the names of the registered lobbyists for the period beginning on July 27, 1978 and ending on September 12, 1978.

Yours very truly,
DOUGLAS LAFOLLETTE
Secretary of State

*Name and Address of Lobbyist, Telephone Number -- Name and Address of Employer, Telephone Number -- Subject of Legislation Code Number -- Date of Employment.*

Bell, Dr. Don, 110 E. Main Street, Room 1002, Madison, Wisconsin 53703, (608) 256-7761 -- Wisconsin Association of Independent Colleges and Universities, 110 E. Main Street, Room 1002, Madison, Wisconsin, 53703, (608) 256-7761 -- 18 -- August 14, 1978.

Broeren, Jean C., P.O. Box 1728, 131 West Wilson Street, Madison, Wisconsin 53701, (608) 266-7884 -- Wisconsin Housing Finance Authority, P.O. Box 1728, 131 West Wilson Street, Madison, Wisconsin 53701, (608) 266-7884 -- 03, 11, 16, 19, 31 (Independent State Authorities) -- August 10, 1978.

Miller, Phillip D., 910 Menomonie Lane, Madison, Wisconsin 53704, (608) 241-0373 -- Citizens Prison Reform Committee, 911 West Bent Avenue, Oshkosh, 54901 (414) 235-6303 -- 22, 31 -- August 9, 1978.

Zietz, Barbara, Mrs., 5560 North Lake Drive, Whitefish Bay, Wisconsin 53217, (414) 962-3614 -- Wisconsin Congress of Parents and Teachers, Inc., 223 N. Baldwin Street, Madison, Wisconsin

53703, (608) 256-1312 -- 4, 6, 8, 11, 13, 16, 17, 18, 22, 23, 24, 31 (Child Welfare) -- August 7, 1978.

Anderson, Norman C., 25 West Main Street, Madison, Wisconsin 53703, (608) 255-7277 -- Wisconsin Occupational Therapy Association, Inc., 611 Rosholt Lane, Altoona, Wisconsin 54701, (715) 834-5877 -- 17 and 23 -- September 5, 1978.

Tierney, Joseph E. III, Suite 1328, 735 N. Water Street, Milwaukee, Wisconsin 53202 (414) 273-4390 -- Wisconsin Warehousemen's Association, Suite 423, 110 E. Main Street, Madison, Wisconsin 53703 (608) 257-4966 -- 11 -- August 18, 1978.

Lobbyists who have cancelled their registration for the duration of the 1977-78 legislative session:

Zwisler, III, Carl E.; International Franchise Association; as of August 7, 1978.

Strzynski, Johanne; Wisconsin Onsite Waste Disposal Association, Inc., as of September 1, 1978.

Changes of name of the following principals:

Due to the merger of the Wisconsin Elementary School Principals' Association (WESPA) and the Wisconsin Secondary School Administratiors Association (WSSAA), the resulting organization is the Association of Wisconsin School Administrators (AWSA). William Harold Anderson was registered as a lobbyist for WESPA, and Charles Hilston was registered a a lobbyist for WSSAA; as a result of the above merger, both Mr. Anderson and Mr. Hilston will continue their status as registered lobbyists for the remainder of the calendar year with Association of Wisconsin School Administrators as principal.

Stanley Erhleck and Associate to Social Security Number Contest, Inc. Mr. Conrad M. Braaten is a registered lobbyist for the corporation.

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Legislative Subject Identification

| Code | Subject |
|---|---|
| 01 | *Agriculture, horticulture, farming & livestock* |
| 02 | *Amusements, games, athletics and sports* |
| 03 | *Banking, finance, credit and investments* |
| 04 | *Children, minors, youth & senior citizens* |
| 05 | *Church & Religion* |
| 06 | *Consumer Affairs* |

07 *Ecology, environment, pollution, conservation, zoning, land & water use*
08 *Education*
09 *Elections, campaigns, voting & political parties*
10 *Equal rights, civil rights & minority affairs*
11 *Government, financing, taxation, revenue, budget, appropriations, bids, fees & funds*
12 *Government, county*
13 *Government, federal*
14 *Government, municipal*
15 *Government, special districts*
16 *Government, state*
17 *Health services, medicine, drugs and controlled substances, health insurance & hospitals*
18 *Higher education*
19 *Housing, construction & codes*
20 *Insurance (excluding health insurance)*
21 *Labor, salaries and wages, collective bargaining*
22 *Law enforcement, courts, judges, crimes & prisons*
23 *Licenses & permits*
24 *Liquor*
25 *Manufacturing, distribution & services*
26 *Natural resources, forests and forest products, fisheries, mining & mineral products*
27 *Public lands, parks & recreation*
28 *Social insurance, unemployment insurance, public assistance & workmen's compensation*
29 *Transportation, highways, streets & roads*
30 *Utilities, communications, television, radio, newspapers, power, CATV, & gas*
31 *Other*

State of Wisconsin
Claims Board

August 18, 1978.

Don Schneider
Senate Chief Clerk
State Capitol
Madison, Wisconsin 53702

Dear Mr. Schneider:

Enclosed is the report of the State Claims Board covering claims heard on March 20, 1978.

The amounts recommended for payment under $1000 on claims included in this report have, under the provisions of s. 16.007, Wisconsin Statutes, been paid directly by the Board.

The Board is preparing the bill(s) on the recommended award(s) over $1,000, and will submit such to the Joint Finance Committee for legislative introduction.

This report is for the information of the Legislature. The Board would appreciate your acceptance and spreading of it upon the Journal to inform the members of the Legislature.

Sincerely,
EDWARD D. MAIN
Secretary

## BEFORE THE CLAIMS BOARD OF WISCONSIN

The Claims Board conducted a hearing on March 20, 1978, on the claim of Kenny Ray Reichoff in the amount of $113,023.19 under s. 285.05, Wis. Stats. Claimant appeared in person and by his attorney, Jack McManus. The Department of Health and Social Services appeared in opposition to the claim by Assistant Attorney General Marguerite M. Moeller.

### The Situation

The claimant, Kenny Ray Reichoff, was arrested on December 11, 1974, and charged with two counts of first degree murder in the shooting deaths of Marvin Collins, Jr. and Ervin Schilling, in Brooks, Wisconsin.

The claimant worked for Marvin Collins, Jr., one of the victims and owner of the chainsaw shop where the murders were committed. The murders occurred on the morning of December 11, 1974. The claimant had keys to the chainsaw shop. The claimant had lived with the Collinses briefly for about a month prior to December 11, 1974, when he moved to a trialer near the chainsaw shop.

On December 6, 1974, in a local bar, Marvin Collins, Jr., slapped the claimant's face and said, "goddamn it, Reichoff, are you trying to kill off my whole family?" The statement by Collins was in reference to an automobile accident where the claimant was driving the Collins car and Marvin Collin's son was injured.

The murders were committed with .22 caliber bullets. The claimant owned a .22 caliber Ruger semi-automatic pistol, serial #1228146, which he alleges was locked in Mike Anderson's car. During the evening of December 10, 1974, the claimant asked Mike

Anderson for the keys to his car, for the purpose of retrieving his clothes and mail.

On December 11, 1974, after the murders and during the investigation of the crimes, the claimant's .22 caliber pistol was found hidden under a trap door in the trialer where he lived.

At the first trial, two experts from the State Crime Laboratory testified that, in their opinions, to a reasonable degree of scientific certainty, the weapon owned by the claimant was the weapon which fired the seven .22 caliber cartridge casings which were found at the scene of the murders, to the exclusion of any other weapon.

On the basis of this evidence, the first jury, on July 23, 1975, found the claimant guilty of both murders. He was thereafter sentenced to two consecutive terms of life imprisonment.

At the first trial, the prosecutor commented to the jury that the claimant did not proclaim his innocence when he was arrested.

The Wisconsin Supreme Court, on March 15, 1977, reversed the claimant's convictions, concluding that the prosecutor's comments to the jury constituted prejudicial error and a new trial was required.

The claimant's second trial ended in acquittal of the charges on October 16, 1977.

Findings of Fact

1. The Wisconsin Supreme Court reversed claimant's first degree murder convictions and caused him to be released before the completed his terms of imprisonment.

2. The claimant has not been pardoned on the ground of innocence.

3. Claude Hayes, the father-in-law of Marvin Collins, Jr., owned a .22 Ruger pistol, serial #185512 which was the same make and model gun as the claimant's pistol.

4. The Claude Hays gun not tested by the State Crime Laboratory as they had already determined that the seven .22 caliber expended cartridge cases found at the scene of the crime were fired by the claimant's gun.

5. It was not proven to a reasonable scientific certainty that the seven .22 caliber expended cartridge cases which were found at the scene of the murders were fired from the .22 caliber Ruger pistol owned by the claimant.

6. The paraffin test which was given to the claimant was negative. However, the test was not given immediately after the murders. During the interviewing period of time, the claimant could have washed his hands, which would render the test meaningless. In

addition, some manufacturers of .22 caliber bullets do not use either barium or antimony in their gun powder.

7. There were some changes or inconsistencies in the testimony of two experts from the State Crime Laboratory when they testified at the second trial, as compared to their testimony at the first trial.

8. There were persons other than the claimant who had opportunity and motive to commit the murders.

9. There were bloody palmprints and fingerprints that were found by the State Crime Laboratory in the chainsaw shop near the victims. None of these prints matched the prints of the claimant or the victims.

10. Many photographs were taken at the scene of the crime. Some of these photographs were not used in the first trial. During preparation for the second trial, photographs that were not used at the first trial could not be located.

Conclusions of Law

1. The claimant is not authorized to petition the Claims Board for compensation for wrongful imprisonment because he did not serve the entire terms of imprisonment to which he was sentenced.

2. The Claims Board may review the record of the claimant's trial for the purpose of understanding the situation, but the findings of fact of the Claims Board must be based only on such evidence or circumstances as have been discovered or have arisen since the claimant's conviction.

3. It is not clear beyond a reasonable doubt that the claimant is innocent of the crimes for which he suffered imprisonment, based on such evidence or circumstances as have been discovered or have arisen since the claimant's convictions.

Opinion

On July 23, 1975, a Juneau County jury found the claimant guilty of two counts of first degree murder. Thereafter, he was sentenced to two consecutive terms of life imprisonment.

Claimant appealed his convictions to the Wisconsin Supreme Court. On March 15, 1977, the court reversed his convictions and remanded the case for a new trial. He was released because of the action of the court. He did not complete his terms of imprisonment, nor was he pardoned on the grounds of innocence.

Section 285.05 (2), Stats., provides:

> "Any person who serves a term of imprisonment under conviction for a crime, of which crime he claims to be

> innocent, or any person who has been pardoned on the ground of innocence and whose imprisonment is thereby shortened, may petition the claims board for compensation for such wrongful imprisonment."

A person whose prison term was shortened by reversal of his conviction is not entitled to the benefits of the statute. Section 285.05 provides benefits for only two classes of persons: those who "serve a term of imprisonment" and those who have "been pardoned on the ground of innocence and whose imprisonment is thereby shortened." See also, LeFevre v. Goodland, 247 Wis. 512, 514, 19 N. W. 2d 884 (1945). The claimant neither served his term, nor had it been shortened by a pardon on the grounds of innocence. In such a case, it has long been held that section 285.05, Stats., does not apply and the Claims Board has no authority or jurisdiction to award any compensation. If there is any remedy, it is to apply to the Legislature for compensation, since the agent appointed by the Legislature has not been given authority by it to deal with such cases.

The doctrine here being applied was first laid down by Judge Stevens of the Dane County Circuit Court on July 12, 1921, in the case of In re Eli J. Long (apparently the same case in which an appeal to the Wisconsin Supreme Court was attempted in the case of Petition of Long, 176 Wis. 361, 187 M.W. 167 (1922)). Judge Steven's opinion is quoted, in part, in 11 OAG 872 (1922) at page 873, as follows:

> "The question presented is what was the intent of the legislature in enacting the statute here in question. That intent is to be fathered from the language used by the legislature, viewed in the light of well established rules of statutory construction. A statute should be so construed as to give force and effect to all its provisions. If the meaning urged by applicant be given to the phrase 'term of imprisonment' it renders nugatory the provision 'or any person who shall have been pardoned the governor on the ground of innocence and whose term of imprisonment shall thereby have been decreased.' Subdivision 2 of section 320a of the statutes. If the phrase 'term of imprisonment' as used in the firs line of this subdivision of the statute includes periods of imprisonment which are less than the term fixed by the court, then it would be wholly unnecessary to add the provision as to pardon by the governor quoted above; because under the interpretation urged by applicant anyone whose term is

shortened by pardon would have come within the provisions of the statute without the enactment of the provision quoted above."

"The fact that the legislature has expressly provided that the statute shall apply to periods of imprisonment shortened by pardon, by famiilar (sic) rules of statutory construction evidences a legislative intent not to apply the statute to cases in which the term of imprisonment is shortened by other means than the pardon of the governor."

So far as we are able to ascertain, this decision has been followed ever since. In 1922, it was given publicity by publication in the reports of the Attorney General's opinions, and the Legislature has not seen fit to amend the statute in substance since that time. The Claims Board, therefore, finds that Judge Stevens' construction was entirely correct, and in accordance with legislative intent.

Assuming, however, that a court, on appeal, were to reject this well established construction given to section 285.05(2), Stats., the Claims Board finds that Mr. Reichhoff's claim should still be denied, because the claimant has not proven that it is clear beyond a reasonable doubt that he is innocent of the crimes for which he suffered imprisonment.

Persons accused of a crime are presumed to be innocent until proven guilty. However, this is not sufficient to establish a claim pursuant to section 285.05, Stats. The Court held, in LeFevre, supra at page 516, as follows:

". . . . neither the presumption of innocence applicable on and during the course of the trial of every person accused of crime, nor the fact that there was an acquittal of LeFevre upon the reversal on appeal of the judgement of conviction, based on the verdict of guilty approved by the trial court, can be considered sufficient to establish or to compel a finding by the commission that 'it is clear beyond a reasonable doubt that the petitioner was innocent of the crime.'

(Sub. (3).) At most the reversal and acquittal pursuant to the appeal was based upon the determination by this court, by a 4-to-3 decision, that, -

'Upon the whole record we cannot say that the proof is sufficient to enable the jury the find that defendant was guilty beyond a reasonable doubt.' (242 Wis. 416, 429)

"Neither that determination as to the insufficiency of the state's proof on the trial nor, in connection therewith, the usual presumption of innocence applicable to every defendant accused of crime compel the conclusion that the commission erred in finding that 'it is not clear beyond a reasonable doubt that ' LeFevre ' was innocent of the crime.'"

The jury verdict of not guilty following reversal by the Wisconsin Supreme Court is also not sufficient to meet the test of the statute. Various degrees of guilt or innocence lie between the extremes of "guilty beyond a reasonable doubt" and "innocent beyond a reasonable doubt".

The Legislature evidently had this in mind and consciously intended to impose upon the applicant for compensation the burden of convincing the Claims Board by proof beyond a reasonable doubt that he is innocent.

The Claims Board has carefully reviewed the evidence offered and arguments made by the claimant in support of his innocence. The Board has limited its review to such evidence or circumstances as have been discovered or have arisen since the claimant's conviction. While these factors may well have created doubt in the minds of the second jury, we find that they are not sufficient to establish innocence beyond a reasonable doubt.

The claimant argues that Mr. Claude Hayes, the father-in-law of Marvin Collins, Jr., owned a gun of the same make and model as the murder weapon and this could possibly be the gun that was used in the killings instead of the gun owned by the claimant. This is a very good example of the kind of evidence which would tend to raise doubt as to guilt. However, the Board believes this is not sufficient to meet the standard set by section 285.05, Stats.

Another example is the conflict in testimony offered at the second trial as to whether or not the cartridges found at the scene of the crime were fired from the claimant's gun.

The result is that it cannot be said to a scientific certainty that they <u>were</u> fired from the claimant's gun. However, the evidence, including the testimony of the claimant's expert, does not show to a reasonable scientific certainty that the bullets <u>were not</u> fired by the claimant's gun.

The Board concludes that the evidence is all of a similar nature. A doubt as to guilt is shown, but innocence beyond a reasonable doubt is not proven.

Decision

The claim of Kenny Ray Reichhoff for compensation for wrongful imprisonment is denied.

(Member Kleczka dissents in part, and concurs in part. He dissents because he believes that claimant did serve a term of imprisonment as required by statute. He concurs that the claimant is not innocent beyond a reasonable doubt).

(Member Hubbard not participating)

Dated at Madison, Wisconsin this 17th day of August, 1978.

GERALD D. KLECZKA
Senate Finance Committee

VIRGIL D. ROBERTS
Assembly Finance Committee

MARK R. CONRAD
Representative of Governor

EDWARD D. MAIN
Representative of Secretary of Administration

## BEFORE THE CLAIMS BOARD OF WISCONSIN

The Claims Board conducted hearings on March 20, 1978, on the claim of Robert J. Stanislawski in the amount of $75,000.00 under sec. 285.05, Stats. Claimant appeared in person and by his attorney, Ray J. Riordan, Jr. The Department of Health and Social Services appeared in opposition to the claim by David Whitcomb, its attorney.

The Situation

The claimant, Robert J. Stanislawski, was arrested on May 11, 1972, and charged with the forceable rape of a twenty-year old student at the University of Wisconsin-Stevens Point, contrary to sec. 944.01, Stats. On September 1, 1972, claimant was found guilty of the charge by a jury of twelve women and committed to the Department of Health and Social Services for institutional care pursuant to sec. 975.06, Stats. Claimant was committed to Central State Hospital, Waupun, Wisconsin, for a period of twenty-two months.

At the trial, the complaining witness complained that on April 26, 1972, she was riding her bicycle at approximately 2 A.M. on Franklyn Street. A man got out of his car and grabbed her bicycle with his hand, dragged her onto a baseball field. The man allegedly removed her blue jeans and ordered her to disrobe. She did so, allegedly requesting that she wear her jacket. She claimed that during the next one and one-half to two hours, the man allegedly had intercourse with her six or seven times and had mutual oral intercourse four times. She claimed that the man entered her fifteen to twenty times.

The physician who examined her approximately three hours after the alleged incident testified that there were no signs of forceable entry, external injury, bruises or lacerations, but did find semen in the vaginal area.

The state crime laboratory found no evidence of semenal stains, blood stains or grass on the wool-type jacket even though the complaining witness testified that this incident had occurred on a grassy field.

The state crime laboratory representative also testified that pubic hairs were found on the mittens worn by the complaining witness, but that these hairs were not the hairs of the claimant, hers or her boyfriend.

The state crime representative also testified that five public hairs were found in the vaginal area of the complaining witness, but that these pubic hairs were not the claimant's.

The complaining witness testified that the alleged rapist had grabbed the handlebars of her bicycle with his bare hands. The investigation showed that there were no fingerprints of the defendant on said handlebars.

The claimant's sister testified that claimant had arrived at her home in Plover at approximately 12:30 or 12: 45 A.M. and had gone to bed. She testified as to his arrival and that she was confident that he had not left the home.

Lieutenant Dwyer, with the Brown County Sheriff Department, administered a polygraph test to the claimant at his request. It was the experienced polygraph examiner's conclusion that the claimant was telling the truth in denying knowledge of or participation in the alleged rape.

On August 25, 1972, Sgt. Riedl of the Wausau Police Department, at the request of defense counsel and with the approval of the District Attorney, William Bablitch, administered a second polygraph test. Sgt. Riedl, who has had a great deal of experience with polygraph examinations, was of the opinion that the claimant

was telling the truth when he denied having intercourse with anyone on April 25 or 26, 1972, and was truthful in not having any knowledge or participation in the alleged rape. The testimony of Sgt. Riedl was offered but not admitted at the trial.

At the request of the defense counsel, and with the cooperation of the District Attorney, a pretrial polygraph examination was given of the complaining witness by Sgt. Riedl. She was actually given two tests, and as a result of the tests, Sgt/ Riedl concluded that she was not telling the truth in stating that she had sexual relations with the defendant and that she was not telling the truth as to whether she had told the District Attorney the whole truth, and was not telling the truth as to whether she was trying to protest someone else in the case, and that she was not telling the truth when she stated that she had intercourse with anyone on that night. Again, the testimony of Sgt. Riedl was offered but not admitted at her trial.

That on the 2nd day of April, 1974, the Wisconsin Supreme Court reversed the judgment of the circuit court for Portage County in the interest of justice, and, as a result of said reversal, the petitioner was released from prison. There was not a new trial.

Claimant seeks fifteen thousand and no/100 dollars ($15,000.00) in damages to recover the costs for defending himself in said charges and sixty thousand and no/100 dollars ($60,000.00) compensation for imprisonment.

Findings of Fact

1. The Wisconsin Supreme Court reversed claimant's rape conviction in the interest of justice for "failure of the prosecution to produce significant evidence concerning the case and defendant's guilt," and caused him to be released before he completed his term of imprisonment. Claimant was sentenced for a term of up to thirty years.

2. The claimant has not been pardoned on the grounds of innocence.

3. The decision of the supreme court is found in State v. Stanislawski, 62 Wis. 2d 730, 216 N.W. 2d 8 (1974). No testimony was presented to the Claims Board for Sgt. Riedl or Lt. Dwyer, the polygraph operators in the instant case.

4. The supreme court's reversal in the interest of justice pursuant to sec. 251.09, Stats., was based upon three areas of failure to produce evidence. "One such denial of fair play resulted from the prosecution's furnishing the defendant with an inaccurate copy of complainant's statement given eariler to the police." Id., p. 746. "The prosecution failed to produce any reports as to fingerprints

taken from the handlebars of complainant's bicycle after the alleged rape." Id., p. 47. "A third area of withheld or belatedly revealed evidence relates to pubic hairs found on the body or on the clothing worn by the complainant on the night of the alleged rape." Id., p. 747.

5. No other evidence or circumstances were presented to the Claims Board which were discovered or which have arisen since the claimant's conviction.

Conclusions of Law

1. The claimant is not authorized to petition the Claims Board for compensation for wrongful imprisonment because he did not serve the entire term of imprisonment to which he was sentenced.

2. The Claims Board may review the record of the claimant's trial for the purpose of understanding the situation, but the findings of fact of the Claims Board must be based only on such evidence or circumstances as have been discovered or have arisen since the claimant's conviction.

3. It is not clear beyond a reasonable doubt that the claimant is innocent of the crime for which he suffered imprisonment, based on such evidence or circumstances as have been discovered or have arisen since the claimant's conviction.

Opinion

Claimant appealed his conviction to the Wisconsin Supreme Court. On April 2, 1974, the court reversed his conviction in the interest of justice pursuant to sec. 251.09, Stats. Claimant was released because of this action of the court. He did not complete his term of imprisonment, nor was he pardoned on the grounds of innocence.

Section 285.05(2), Stats., provides:

> "Any person who serves a term of imprisonment under conviction for a crime, of which crime he claims to be innocent, or any person who has been pardoned on the ground of innocence and whose imprisonment is thereby shortened, may petition the claims board for compensation for such wrongful imprisonment."

A person whose prison term was shortened by reversal of his conviction is not entitled to the benefits of the statute. Section 285.05 provides benefits for only two classes of persons: those who "serve a term of imprisonment" and those who have "been pardoned on the ground of innocence and whose imprisonment is thereby shortened."

See also, LeFevre v. Goodland, 247 Wis. 512, 514, 19 N.W.2d 884 (1945). The claimant neither served his term, nor had it been shortened by a pardon on the grounds of innocence. In such a case, it has long been held that sec. 285.04, Stats., does not apply, and the Claims Board has no authority or jurisdiction to award any compensation. If there is any remedy, it is to apply to the Legislature for compensation, since the agent appointed by the Legislature has not been given authority by it to deal with such cases.

The doctrine here being applied was first laid down by Judge Stevens of the Dane County Circuit Court on July 12, 1921, in the case of In re Eli J. Long (apparently the same case in wich an appeal to the Wisconsin Supreme Court was attempted in the case of Petition of Long, 176 Wis. 361, 187 M.W. 167 (1922)). Judge Steven's opinion is quoted, in part, in 11 OAG 872 (1922) at page 873, as follows:

> "The question presented is what was the intent of the legislature in enacting the statute here in question. That intent is to be fathered from the language used by the legislarue, viewed in the light of well established rules of statutory construction. A statute should be so construed as to give force and effect to all its provisions. If the menaing urged by applicant be given to the phrase "term of imprisonment" it renders nugatory the provision "or any person who shall have been pardoned the governor on the ground of innocence and whose term of imprisonment shall thereby have been decreased." Subdivision 2 of section 320a of the statutes. If the phrase "term of imprisonment" as used in the firs line of this subdivision of the statute includes periods of imprisonment which are less than the term fixed by the court, then it would be wholly unnecessary to add the provision as to pardon by the governor quoted above; because under the interpretation urged by applicant anyone whose term is shortened by pardon would have come within the provisions of the statute without the enactment of the provision quoted above.
>
> "The fact that the legislature has expressly provided that the statute shall apply to periods of imprisonment shortened by pardon, by famiilar (sic) rules of statutory construction evidences a legislative intent not to apply the statute to cases in which the term of imprisonment is shortened by other means than the pardon of the governor."

So far as we are able to ascertain, this decision has been followed ever since. In 1922, it was given publicity by publication in the reports of the Attorney General's opinions, and the Legislature has not seen fit to amend the statute in substance since that time. The Claims Board, therefore, finds that Judge Stevens' construction was entirely correct, and in accordance with legislative intent.

Assuming, however, that a court, on appeal, were to reject this well established construction given to section 285.05(2), Stats., the Claims Board finds that Mr. Reichhoff's claim should still be denied, because the claimant has not proven that it is clear beyond a reasonable doubt that he is innocent of the crimes for which he suffered imprisonment.

Persons accused of a crime are presumed to be innocent until proven guilty. However, this is not sufficient to establish a claim pursuant to section 285.05, Stats. The Court held, in LeFevre, supra at page 516, as follows:

> ". . . . neither the presumption of innocence applicable on and during the course of the trial of every person accused of crime, nor the fact that there was an acquittal of LeFevre upon the reversal on appeal of the judgement of conviction, based on the verdict of guilty approved by the trial court, can be considered sufficient to establish or to compel a finding by the commission that 'it is clear beyond a reasonable doubt that the petitioner was innocent of the crime.'
>
> "Neither that determination as to the insufficiency of the state's proof on the trial nor, in connection therewith, the usual presumption of innocence applicable to every defendant accused of crime compel the conclusion that the commission erred in finding that 'it is not clear beyond a reasonable doubt that' LeFevre 'was innocent of the crime.'"

Various degrees of guilt or innocence lie between the extremes of "guilty beyond a reasonable doubt" and "innocent beyond a reasonable doubt."

The Legislature evidently had this in mind and consciously intended to impose upon the applicant for compensation the burden of convincing the Claims Board by proof beyond a reasonable doubt that he is innocent.

The Claims Board has carefully reviewed the evidence offered and arguments made by the claimant in support of his innocence. The Board has limited its review to such evidence or circumstances as

have been discovered or have arisen since the claimant's convictions which at best would consist of a consideration of the polygraph results and the three areas of failure to produce evidence a the trial. We find that they are not sufficient to establish innocence beyond a reasonable doubt, although they may be persuasive in preventing a finding of guilt beyond a reasonable doubt.

The claimant argues that the results of the polygraph tests taken by Sgt. Riedl and Lt. Dwyer establish claimant's innocence beyond a reasonable doubt. The actual test charts were never presented in evidence to the Claims Board. Reference to the test results appear in the transcript of the chamber proceedings at the trial and in the decision of the supreme court. Neither Sgt. Riedl nor Lt. Dwyer testified at the trial or at the hearing before the Claims Board. The results of the polygraph tests as known to the Claims Board do not conclusively establish the innocence of the claimant beyond a reasonable doubt. The Claims Board had an insufficient basis to give these test results the degree of credibility, reliability and probative value argued for by the claimant.

Also, the prosecution's failure to produce certain evidence at the trial in the three areas mentioned in the supreme court decision do not establish the innocence of claimant beyond a reasonable doubt.

Although doubt as to guilt has been shown, innocence beyond a reasonable doubt has not been established.

Decision

The claim of Robert J. Stanislawski for compensation for wrongful imprisonment is denied.

(Member Kleczka dissents in part, and concurs in part. He dissents because he believes the claimant did serve a term of imprisonment as required by statute. He concurs that the claimant is not innocent beyond a reasonable doubt).

Dated at Madison, Wisconsin, this 17th day of August, 1978.

GERALD D. KLECZKA
Senate Finance Committee

VIRGIL D. ROBERTS
Assembly Finance Committee

THOMAS P. FOX
Representative of Governor

EDWARD D. MAIN
Representative of Secretary of Administration

ALLAN P. HUBBARD
Representative of Attorney General