

State of Wisconsin Claims Board

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Patricia.Reardon@wisconsin.gov ♦ www.claimsboard.wi.gov

February 14, 2020

Jeffrey Renk, Senate Chief Clerk
State Capitol, Room B20 SE
Madison, WI 53702

Dear Mr. Renk:

Enclosed is the report of the State Claims Board covering the claim of Derrick Sanders, which was heard on December 10, 2019.

Those claims approved for payment pursuant to the provisions of §16.007 and § 775.05 Stats., have been paid directly by the Board.

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

Sincerely,



Amy Kasper
Secretary

Enclosure

✓ cc: Patrick Fuller
Assembly Chief Clerk

STATE OF WISCONSIN CLAIMS BOARD

CLAIM OF: DERRICK SANDERS

CLAIM NO. 2019-011-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

The Claims Board considered this matter on December 10, 2019. Claimant Derrick Sanders appeared at the hearing. The Milwaukee County District Attorney's Office declined to appear.

Background

This is a claim for Innocent Convict compensation pursuant to Wis. Stat. § 775.05. The claim relates to Sanders' 1993 conviction for First-Degree Intentional Homicide as Party to a Crime. Sanders states he is innocent of this crime. He requests the maximum reimbursement of \$25,000 for the 26 years he spent in prison plus an additional \$5,729,965.

Claimant's Facts and Argument

Sanders was charged with first-degree intentional homicide-party to a crime relating to an incident on November 2, 1992, when Jason Bowie was killed in an abandoned building by a single gunshot to the head. Charges were filed against two other individuals, Anthony Boddie and John Peavy, in connection with the homicide. Sanders alleges he is innocent and had no involvement in this homicide.

Bowie was severely beaten at two different houses prior to being taken to an abandoned house where he was murdered. Boddie, Peavy, and Sanders were involved in the beating. At some point, Boddie and Peavy took the victim from the second home and walked him down the alley to the abandoned house where he was shot in the head. Boddie pled guilty to first-degree intentional homicide, party to a crime and Peavy pled guilty to an amended charge of first-degree reckless homicide, party to a crime. Sanders entered a no-contest plea to first-degree intentional homicide, party to a crime. In October 1993, Sanders was sentenced to life imprisonment.

Sanders consistently maintained that he was not involved in or aware of the shooting. He states that he pled no-contest to the charge because his attorney was ineffective and did not explain the meaning of "party to a crime." The Court of Appeals vacated Sanders' plea in 1995, concluding that it was not knowingly and intelligently entered because Sanders did not fully understand the potential for punishment if convicted. The case was remanded for further proceedings.

In 1996, Sanders' new attorney (Attorney Vishny) had him re-enter the same plea and stipulate to the exact same sentence despite the fact that Sanders told Vishny that after beating the victim, Boddie sent Sanders across the street to get his beer and that when Sanders returned to the house, Boddie, Peavy, and the victim were gone. Boddie also signed an affidavit in 1996 stating that Boddie alone was responsible for the shooting. Sanders states that he entered the same plea again because he believed that by participating in the beating, he was strictly liable for the homicide.

In May 2017, Sanders filed a motion for postconviction relief to withdraw his no contest plea. He testified that Attorney Vishny never reviewed with him how his conduct could establish his guilt as party to a crime. He also testified that if he had understood the concept of party to a crime and how it related to his involvement in the incident, he would not have pled no contest. The Circuit Court vacated Sanders' plea in August 2018, concluding that "the State has failed to demonstrate that a factual basis existed for the defendant's plea or by clear and convincing evidence that he entered his plea knowingly, voluntarily and intelligently, with an understanding of the nature of party to a crime, and more to the point, how his conduct satisfied the elements of PTAC liability." The court stated, "It would be manifestly unjust if the

defendant were to remain convicted of first-degree intentional homicide, party to a crime, and therefore, he must be allowed to withdraw his plea.”

At the direction of the Milwaukee County District Attorney’s Office, police officers re-interviewed Anthony Boddie. During that interview, Boddie again stated that although Sanders, Peavy, and Boddie all participated in beating the victim, Boddie alone took the victim to the abandoned house and shot him. Based on Boddie’s 1996 affidavit and this interview, the State dismissed the charges against Sanders in September 2018.

Sanders notes that at the time of his arrest he was employed full-time, had no criminal record, and was an honorably discharged US Navy Veteran. He requests the statutory maximum reimbursement of \$25,000 for his 26-year imprisonment. Sanders points to awards for additional damages in prior Innocent Convict Compensation claims and requests an additional \$5,729,965 for loss of liberty, property, and earning potential.

DA’s Response and Argument

Based on a review of the facts surrounding the crime, the Milwaukee County District Attorney’s Office does not oppose Sanders’ claim for \$25,000, which is the statutory maximum amount, under Wis. Stat. § 775.05(4). The DA’s Office takes no position on Mr. Sanders’ claims for additional damages and believes the Claims Board is better suited to make a determination regarding those damages.

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 was imprisoned.

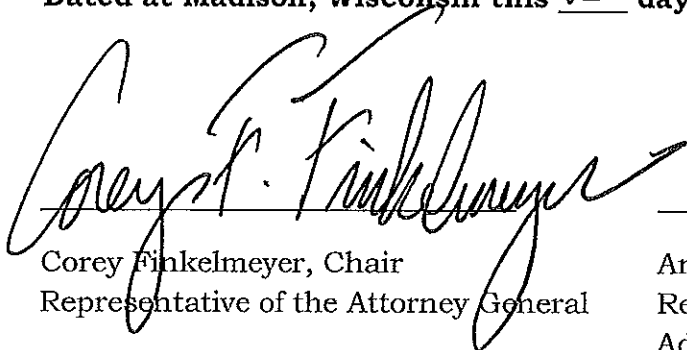
Although Sanders participated in the beating prior to the homicide, a court found there was no factual basis to conclude Sanders was a party to the crime of first-degree intentional homicide. The beating occurred in locations other than the homicide and Sanders has consistently maintained that he was not involved in the homicide. The criminal complaint was based on Peavy’s statement that Sanders accompanied Boddie to the abandoned house where the victim was shot; however, in 1996, Boddie signed a statement that Sanders was not at the location of the homicide and was not involved in the homicide.

In addition, twice a court has concluded that Sanders did not knowingly and intelligently enter the “no contest” plea for which he was convicted. Although the

Board has ruled historically that the entry of a “no contest” plea by a defendant constitutes substantial evidence that the defendant’s own actions contributed to the conviction, we do not in this ruling seek to change this past practice, absent unique and compelling circumstances. However, the specific facts of this case demonstrate that Sanders’ entry of a no contest plea, both at the time of his initial conviction and again in 1996, was a legal error and therefore the Board cannot find that Sanders contributed to his own conviction. The unique facts supporting such a finding include: the fact that Sanders maintained his innocence and sought a withdrawal of his plea following his incarceration; the fact that he met the high legal standard to merit withdrawal in such circumstances; and the fact that the court concluded both that the State failed to show there was a factual basis for Sanders’ 1996 no contest plea, and that the facts surrounding his involvement in the incident did not satisfy any element of party to a crime liability.

Based on the above, the Board concludes and finds that the evidence is clear and convincing that Sanders was innocent of the charge discussed herein. Accordingly, the Board further concludes that compensation in the amount of \$25,000 shall be awarded from the Claims Board appropriation § 20.505(4)(d), Stats. Vote: 5-0

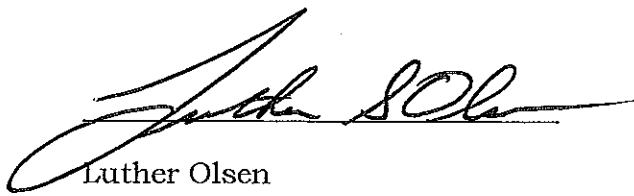
Dated at Madison, Wisconsin this 12th day of February, 2020



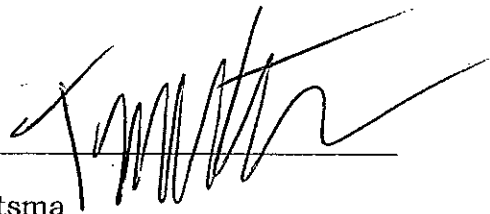
Corey Finkelmeyer, Chair
Representative of the Attorney General



Amy Kasper, Secretary
Representative of the Secretary of
Administration



Luther Olsen
Senate Finance Committee



Terry Katsma
Assembly Finance Committee



Ryan Nilsestuen
Representative of the Governor