

The Injustice of Denying Compensation to the Innocent – Part I of II

Reggie is an innocent man...

by: Brett Schreiber, CASD President

On March 27, 1994 Reggie Cole was at home, in-bed, sick with the flu. That night, many miles away in downtown Los Angeles, a robbery went wrong and the victim Felipe Gonzeles was murdered. Video evidence confirmed that shots were fired at the robbery suspects and at least one was likely wounded. A key “eye” witness to the robbery – who also doubled as an LAPD informant in exchange for police looking the other way regarding the house of ill repute he ran on the same street – later identified the assailant. The witness claimed to have seen the suspect in the moments after the attempted robbery, and after the witness was told that suspect had suffered a gunshot wound to the leg, the witness was certain he properly identified Gonzeles’ robber/murderer.



A few days later, Reggie Cole was arrested. It was later discovered that the “eye” witness had never seen the robbery or the shooters and based his identification of the suspect upon second-hand information he received from his daughter. It turns out the witness’s daughter saw the shooter on the night in question and again ten days later. By that point, Reggie was already incarcerated and could not have been the person she claimed to have seen. Further, while Reggie had suffered a gunshot wound to his leg many years earlier there was no evidence that he had suffered a recent wound nor been seen in an area hospital on the night in question. A security guard in the hospital on the night of the robbery later picked Reggie from a photo line-up even though his first picks out of the line-up were “fillers”, not Reggie (a fact that was not turned over to defense counsel).

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With questionable eye witness testimony, zero physical evidence linking Reggie to the murder, and ineffective assistance of counsel, Reggie was convicted of murdering Felipe Gonzales and sentenced to life in prison.

The testimony and physical evidence in Reggies’ case remained unchallenged until 2007. By that point, Reggie was on trial again – now facing the death penalty – for the murder of the prison shot caller Eugene Clark. Clark, aka the Devil, was notorious in the prison for his violence and drug and alcohol enterprises. When the Devil’s “cellie” got in trouble for smuggling in the prison, the Devil went to Reggie to take the rap and spend the time in “ad seg” aka solitary confinement. Since Reggie was a lifer with no possibility of parole the unwritten rules of the prison required him to take the rap or face the wrath of the Devil. Reggie, who despite years incarcerated still maintained his innocence, refused to take the rap for another offense he did not commit. A few days later, while in the yard, the Devil attacked Reggie, attempted to shank him in the neck, and during the fight the Devil was stabbed and killed by Reggie in self-defense.

Reggie was charged with murdering the Devil and now faced the death penalty. Thankfully, for Reggie his lawyer in the second trial, Christopher Plourd, (now a sitting judge of the Los Angeles Superior Court in the Los Angeles Superior Court), filed a Notice of Motion to Strike the underlying conviction. Only then, when Reggie faced the death penalty for the Clark killing, was the original crime which placed him in prison investigated with an even hand. The evidence that came to light after five years of investigation revealed that Reggie was an initial suspect in error, there was no reliable eye-witness testimony, and the physical evidence excluded Reggie.

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Further, Reggie's co-defendant who was also convicted of murdering Gonzales, subsequently initiated similar proceedings which uncovered additional facts and evidence. In reversing the underlying conviction, the Los Angeles Superior Court found multiple errors during the prosecution including the withholding of evidence by the state as well as the state's failure to correct false testimony. The court made specific factual findings as to false and misleading testimony by the prosecution's two primary eye-witnesses in addition to finding ineffective assistance of counsel, amounting to a denial of due process. The evidence proved that Reggie was factually innocent of the Gonzales murder.

After serving more than a decade of his life sentence as a result of an unfair trial, Reggie was faced with a Hobson's choice: accept a plea deal for the killing of Clark with a stipu-

lated 11- year sentence and receive credit for time served from the date of his initial incarceration, or test the criminal justice system again by asserting self-defense while facing the death penalty on trial for the murder of Clark. Reggie chose the former. He pled no contest to voluntary manslaughter, waiving his right to appeal. Reggie was finally released from prison on May 15, 2010 after serving nearly sixteen years in custody.

In hopes of recompense for nearly two decades of unjust imprisonment, Reggie petitioned the Victim Compensation and Government Claims Board for \$100 for every day he'd spent in prison, the maximum permitted by state law at the time. But far from ending his troubles, the request began a wholly new and equally exasperating struggle to reintegrate back into free society. And, like an astonishing number of innocent men and women who have been

wrongly imprisoned in California, Reggie would again feel the full weight of society's injustice.

The injustice continues...

According to the National Registry of Exonerations, 156 people have been exonerated in California since 1989, but a vast majority of them have not received the compensation of up to \$140 a day that the state now offers to the wrongly imprisoned. Since the board's inception 15 years ago, it has approved the claims of only 22 out of 80 applicants. Many exonerated prisoners don't even bother with the onerous, often futile process.

Unlike convicted felons who leave prison on parole and are eligible for services ranging from addiction treatment to housing and employment assistance, exonerees like Reggie walk out of prison with

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virtually nothing. They have years of their lives missing, and no accumulated savings, Social Security, or retirement benefits. Unlike for parolees, there is no statewide program to provide exonerees with assistance—and they often need it, as they are commonly maladapted, many of them having been in prison for decades. Prior exonerees have summed up their plight as being forced to leave prison “with their lives in a paper bag.”

California’s compensation statute, Penal Code § 4902 *et. seq.* is ostensibly, designed to aid men and women who went to prison due to mistaken eyewitness identification, bad police work, or other factors that lead prosecutors and police to proceed without sufficient or reliable evidence. It’s hard to conclude that it’s working; most petitions don’t even proceed to the hearing stage; many are denied after a full hearing, which can include revisiting witness testimony (grueling for someone who just went through the trauma of prison and multiple court hearings). The denial of a compensation claim is often a denial of hope.

But denial is, far and away, par for the course. In order to be compen-

sated, an exoneree must meet a nearly impossible standard. The board requires proof that he or she is “more likely than not” innocent, one of the toughest standards among the 30 states with compensation statutes (many have no specific standard). In a radical departure from a criminal trial, the burden is on the exoneree to prove his or her innocence, which, in the absence of DNA evidence, can be challenging for someone without resources to hire investigators. In some states, including Missouri, DNA evidence is actually required for compensation. While California has no such requirement, exonerees here usually must prove that someone else committed the crime. The decision to release an exoneree from prison in no way translates into a determination of innocence under the compensation statute. In fact, the board often rehears the evidence and comes to its own decision. Even exonerees who’ve been found factually innocent (an additional legal step beyond mere release, indicating that the exoneree absolutely did not commit the crime) have been refused compensation.

That is precisely what happened to Reggie when he first filed his compensation claim. The Attorney

General’s office vehemently opposed his efforts to be compensated claiming Reggie contributed to his own conviction and an even if wrongfully convicted had suffered no pecuniary loss. Thanks to the Herculean efforts of the California Innocence Project (CIP) here in San Diego, Reggie was freed in the first instance. And thanks to their continued efforts he was able to recently obtain a factual finding of innocence. However, despite their best efforts, the Innocence Project does what they do best – freeing the wrongfully convicted. They don’t have the time or the resources to manage all of the compensation claims as well.

That is where civil justice attorneys – like many of those reading this column – come in. In conjunction with CIP I’m working to get Reggie the compensation he deserves. Check out next month’s President’s Column where I will discuss the efforts we’re undertaking to counter the tremendous resources currently being wasted by the State of California to deny compensation to the innocent. **TBN**

