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SENT VIA UNITED STATES POSTAGE AND EMAIL(joshuac1@atg.wa.gov)

Bob Ferguson
Washington State Attorney General
800 5th Avenue Suite 2000 TB-14
Seattle, Washington 98104

Re: *Wrongful Conviction Compensation Act*

Dear the Honorable Bob Ferguson:

BACKGROUND FACTS

Detective James Schimpsher was the deputy evidence supervisor for Phelps County Sheriff Department when several violation occurred. (Exhibit 1) On October 26, 2004, the Honorable Douglas E. Long of the Circuit Court of Pulaski County, Missouri Division I, dismissed a case with prejudice where Detective James Schimpsher was the only seizing officer. "7. Detective Schimpsher removed the items from the scene in unsealed evidence bags and brought the unsealed bags to the Phelps County Sheriff's Department." He violated several department procedures related to management of evidence.

Detective Schimpsher was the assistant evidence officer when "16. An audit of the Phelps County Sheriff's Department shows that in the years 1999 to 2003, the Phelps County Sheriff's Department was unable to account for evidence for about 730 cases including weapons and drug cases."

Detective Schimpsher and his supervisor were removed from the evidence department. Detective D. Andrew Davis took over and was unable to produce five pounds of marijuana seized during Detective Schimpsher's tenure. The Court also found "23. Further the court finds that the cocaine [seized by Detective Schimpsher] sought to be introduced into evidence was not disclosed to the Prosecuting attorney for

approximately 45 months after it was allegedly found in the defendants [sic] vest pocket, the night before the case was set to be tried to a jury....” Detective Schimpsher was fired from the Phelps County Sheriff Department due to this case. (Exhibit 2) Detective Schimpsher was also sued at least twice for excessive force while at the Phelps County Sheriff’s Department.

Mr. Schimpsher was hired by King County Sheriff Transit Department as a deputy officer. On November 7, 2006, Deputy Schimpsher claims he was at a Metro bus stop¹ in the University District and watched a three-party drug deal. Deputy Schimpsher claimed he chased two of the three parties in the drug deal, but was unable to apprehend them. Several moments later, Deputy Schimpsher thought he saw the third party in the alleged drug deal. Deputy Schimpsher approached James Simmons, an African American who “fit the discription,” and grabbed him by his arm. Mr. Simmons was making \$90 an hour as an IT Security Compliance Auditor with interim security clearance with the Department of Defense. Deputy Schimpsher accused him of selling crack cocaine. Deputy Schimpsher grabbed him and threw him to the ground. Deputy Schimpsher broke Mr. Simmons’ shoulder bone and tased him repeatedly. This caused Mr. Simmons to defecate. Deputy Schimpsher handcuffed Mr. Simmons tased him again. Deputy Schimpsher then claims he went back to the place where he originally took Mr. Simmons to the ground and produced two pieces of crack cocaine.

Based on Deputy Schimpsher’s claims, prosecutors charged Mr. Simmons with third degree assault on Deputy Schimpsher, to which the jury returned a verdict of not guilty, and Violating the Uniform Controlled Substance Act (VUCS) for possessing crack cocaine with the intent to deliver. (Exhibit 3)

On December 27, 2006, Deputy Schimpsher and his partner detained three men allegedly involved in drug dealing at a Metro stop in the University District. (Exhibit 4) Deputy Schimpsher offered to release one detainee if he helped set up a drug sting by selling their crack to a known drug dealer. A complaint was filed, which led to an internal investigation. Deputy Schimpsher was found to have fabricated his story by making multiple fraudulent statements. King County Sheriff Sue Rahr, King County wrote a letter to Deputy Schimpsher on December 4, 2007, stating “I simply do not believe your version of events.” On December 14, 2007, based on the investigation and findings of dishonesty, Mr. Schimpsher was terminated. A case, unrelated to this incident, where Deputy Schimpsher made an arrest, was dismissed by prosecutors based on Deputy Schimpsher’s termination for dishonesty.

Prosecutors did not disclose to the defense Deputy Schimpsher’s termination in Missouri for falsifying evidence, to which he was actively appealing, or the active investigation by the King County Sheriff for dishonesty, despite a timely demand by Mr. Simmons’ attorney for all impeachment evidence and exculpatory evidence. (Exhibit 5) This was essential to Mr. Simmons defense. Mr. Simmons refused all plea offers made by the prosecution and at all times maintained that he was 100% innocent. The case was

¹ It was later discovered that the address Deputy Schimpsher claimed to have seen the drug deal was not actually a bus stop.

tried before a jury. Deputy Schimpsher testified. Based almost exclusively on Deputy Schimpsher's testimony, the jury convicted Mr. Simmons of selling crack cocaine, but found him not guilty of the third degree assault charge. (Exhibit 6)

Mr. Simmons was sentenced to 12 months and 1 day in jail, which he served. (Exhibit 7) He served one and a half years on parole. His supervision was terminated on July 26, 2009. (Exhibit 8)

Mr. Simmons is 63 years old. His friends and family distanced themselves from him due to the drug charge and conviction. (Exhibit 9) After spending a year in prison, Mr. Simmons life was ruined. Mr. Simmons became homeless and depressed. He could not get any job yet alone his previous job as a high paid IT specialist with a felony conviction for dealing crack cocaine nor could he even keep his security clearance.

Mr. Simmons told several attorneys what happened to him. The following attorneys represented Mr. Simmons *pro bono* because they believed him to be innocent and wrongfully convicted: Steven Olson, who is now a City of Seattle Municipal Court Judge, Aaron Pelley, Kristy Stell, Ryan Robertson, and Christopher Morales.

Mr. Simmons moved the court to vacate his conviction and to set his case for new trial. (Exhibit 5) The prosecutor agreed to dismiss the drug charge, vacate the conviction and drop the new trial given the new exculpatory information. (Exhibit 10) The Court signed the Order to dismiss the charges and vacate the conviction.

Mr. Simmons moved to expunge and delete his conviction data. (Exhibit 11) The conviction data was deleted on June 3, 2010. (Exhibit 12)

Mr. Simmons found a lawyer, Mr. Christopher Morales, to file a claim for damages for him but the statute of limitations had run. (Exhibit 2) Mr. Simmons has not been compensated for the violation of his rights. He now lives in a shelter and is doing everything he can to recover.

WRONGFUL CONVICATION COMPENSATION ACT

The legislature passed the statute unanimously which sought to remedy the following injustice:

A majority of those wrongly convicted in Washington state have no remedy available under the law for the destruction of their personal lives resulting from errors in our criminal justice system. The legislature intends to provide an avenue for those who have been wrongful convicted in Washington state to redress the lost years of their lives, and help to address the unique challenges faced by the wrongly convicted after exoneration.

(Section 1)

This statute was designed for a man like Mr. Simmons. Officer Schrimpsheer's false witness and lies have destroyed Mr. Simmons' life, which will never be the same. This is the only avenue for Mr. Simmons to seek justice even if it is just an initial step to alleviate the injustice done and help him rebuild his life.

Section 4 of the statute lists a number of standards/prongs which must be met to establish a claim under the statute. The first is the following:

- (1)(a) The claimant has been convicted of one or more felonies in superior court and subsequently sentenced to a term of imprisonment, and has served all or part of the sentence.

Here, Mr. Simmons was convicted of one felony, violation of the VUCSA, in superior court, and subsequently sentenced to 12 months and 1 day in jail to which he served his full term.

The next prong of Section 4 of the statute asks:

- (1)(b)(i) The claimant is not currently incarcerated for any offense; and
- (ii) During the period of confinement for which the claimant is seeking compensation, the claimant was not serving a term of imprisonment or a concurrent sentence for any crime other than the felony or felonies that are the basis for the claim;

Mr. Simmons is not currently incarcerated. During his confinement, he was not serving a concurrent sentence.

The next section of Section 4 of the statute states in relevant part:

- (c)...
- (ii) The claimant's judgment of conviction was reversed or vacated and the charging document dismissed on the basis of significant new exculpatory information or, if a new trial was ordered pursuant to the presentation of significant new exculpatory information, either the claimant was found not guilty at the new trial or the claimant was not retried and the charging document dismissed; and

Mr. Simmons filed a motion to vacate his conviction and to set his case for new trial based on the "new exculpatory information." (Exhibit 5) The prosecutor filed a motion to dismiss the conviction, strike the new trial and vacate the conviction because of the newly discovered exculpatory information and in "the interest of justice." (Exhibit 11 at page 7) The Court signed an order stating "The defendant's conviction herein for

VUSCA, Count 1, having been dismissed with prejudice on the motion of the State, is now VACATED.” (Exhibit 11 at page 1)

The next clause of Section 4, Subsection (1)(d), simply requires that the claim is not time barred per Section 9. Section 9 mandates a claim be brought within 3 years of the pardon or order granting relief. This claim is not time barred by Section 9, because that section allows all claims within three years from the “effective date” of the statute.

The next portion of Section 4, subsection (2), states the following:

(2) In addition to the requirements in subsection (1) of this section, the claimant must state facts in sufficient detail for the finder of fact to determine that:

(a) The claimant did not engage in any illegal conduct alleged in the charging documents; and

(b) The claimant did not commit or suborn perjury, or fabricate evidence to cause or bring about the conviction. A guilty plea to a crime the claimant did not commit, or a confession that is later determined by a court to be false, does not automatically constitute perjury or fabricated evidence under this subsection.

Mr. Simmons was charged with third degree assault on Officer Schimpsher and possession of crack cocaine with intent to deliver. He was found not guilty of the assault. The charge for VUSCA has been dismissed and vacated based on the exculpatory evidence. Officer Schimpsher grabbed Mr. Simmons while he was walking down the street because he apparently fit the description of a drug dealer, severely beat him, and then falsely accused him of selling crack cocaine to cover the excessive force. Mr. Simmons refused all plea deal offers from the prosecution. He insisted on a trial, to have his day in court. He maintained that he was 100% innocent before, during and after trial. Mr. Simmons did not commit perjury or fabricate evidence.

After Mr. Simmons was found guilty of delivering crack cocaine – based on Officer Schimpsher’s false testimony – Mr. Simmons continued to emphatically profess his innocence. Mr. Simmons convinced several lawyers that he was innocent and wrongfully convicted. He convinced the following attorneys to represent him *pro bono*: Steven Olson, who is now a City of Seattle Municipal Court Judge, Aaron Pelley, Kristy Stell, Ryan Robertson and Christopher Morales. Many more lawyers in the legal community and in the media also believe that Mr. Simmons was absolutely innocent and was wrongfully convicted. Five minutes with Mr. Simmons will convince almost anyone.

I remember speaking to Mr. Simmons when he came to my old firm to ask for help, which primarily involved representing clients injured by police misconduct. Mr. Simmons story stuck with me for years due to the sheer injustice, but we could not do anything because the statute of limitations had run. Once the Wrongful Conviction Compensation Act passed, I started to look for Mr. Simmons, only to have another

lawyer who was in contact with Mr. Simmons approach me and ask me to bring a claim for Mr. Simmons under this statute.

The next provision of Section 4 is subsection 3 which states:

(3) Convictions vacated, overturned, or subject to resentencing pursuant to *In re: Personal Detention of Andress*, 147 Wn.2d 602 (2002) may not serve as the basis for a claim under this chapter unless the claimant otherwise satisfies the qualifying criteria set forth in section 2 of this act and this section.

The conviction was not vacated per *In re: Personal Detention of Andress*, 147 Wn.2d 602 (2002) (holding that assault cannot serve as the predicate felony for second degree felony murder, the court vacated the conviction of second degree murder and remanded the case for further proceedings) Here there was only one conviction dismissed and vacated based on the new exculpatory information. Thus, the conviction was not vacated based on this holding in *Andress*.

The next provision of Section 4 is subsection 4 which states:

(4) The claimant must verify the claim unless he or she is incapacitated, in which case the personal representative or agent filing on behalf of the claimant must verify the claim.

Section 2(3)(a) also allows an authorized agent to file a claim if the party is a non-resident of Washington. The undersigned is his authorized representative. Mr. Simmons can verify the claim.

The next provision of Section 4 is subsection 5 which states:

(5) If the attorney general concedes that the claimant was wrongly convicted, the court must award compensation as provided in section 6 of this act.

The office of the attorney general is encouraged in the strongest terms to promptly accept Mr. Simmons claim under the Wrongful Conviction Compensation Act. Mr. Simmons meets all of the prongs of the statute to the best of the undersigned understanding. He would be a perfect example to the legal community of how the ends of justice can be met through this Act. It is incumbent upon the attorney general's office to further the will of the legislature by accepting all valid claims in a swift and prompt manner without unnecessarily adversarial proceedings.

Given the fact that this is the first claim to be submitted to the panel and that all sides acknowledge that provisions of the statute are ambiguous (i.e. whether a motion or jury trial must be set), this letter is being submitted to expedite the matter and work through the initial ambiguities in a cooperative manner. If further documentation or

explanation is required for the panel to come to a decision, please let me know as soon as possible.

CONCLUSION

Mr. Simmons' life has been ruined by a severe miscarriage in justice perpetrated in this state. It has left him homeless. It is imperative that we promptly right this wrong. It is understood that the panel will review this claim by the end of this week. If the panel rejects Mr. Simmons' application, he will file a complaint and summons with the King County Superior court the next week per the current understanding of the statute.

Thank you.

Sincerely,

Law Offices of Yohannes K. Sium

Yohannes K. Sium

Encls.