

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

JUAN F. RAMOS,

Petitioner,

vs.

Case No. 13-1910VWI

STATE OF FLORIDA,

Circuit Court Case No.:
05-1982-CF-001321-AXXX-XX

Respondent.

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held on December 17 and 18, 2013, in Brevard County, Florida, before J. D. Parrish, a designated Administrative Law Judge with the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Benedict P. Kuehne
Law Office of Benedict P. Kuehne, P. A.
100 Southeast Second Street, Suite 3550
Miami, Florida 33131-2154

For Respondent: Phillip D. Havens, Esquire
Office of the State Attorney
7th Judicial Circuit
251 North Ridgewood Avenue
Daytona Beach, Florida 32114

STATEMENT OF THE ISSUE

The issue is whether Petitioner, Juan F. Ramos (Petitioner), is entitled to compensation pursuant to sections 961.01

through 961.07, Florida Statutes (2013). Unless otherwise stated, all references to the law will be to Florida Statutes (2013).

PRELIMINARY STATEMENT

By order entered May 13, 2013, Circuit Court Judge Charles Roberts adjudged as follows:

The Defendant's [Petitioner herein] Amended Petition to Victims of Wrongful Incarceration Compensation Act shall be transferred to the Division of Administrative Hearings for findings of fact and a recommended determination of whether the Defendant has established that he is a wrongfully incarcerated person who is eligible for compensation.

Thereafter, the matter was forwarded to the Division of Administrative Hearings (DOAH) for formal proceedings, and the case was scheduled for hearing. Following a number of prehearing conferences, the case was re-scheduled for December 17 through 20, 2013.

At hearing, Petitioner testified on his own behalf and presented the testimony of his wife, Danette Ramos. Respondent, State of Florida (Respondent), presented the testimony of Major John Hankins, Manuel Ruiz, and Wayne Porter. The parties offered exhibits as described in the two-volume transcript of the proceedings filed with DOAH on January 7, 2014. Petitioner

objected to a number of Respondent's exhibits as hearsay. As announced throughout the hearing, pursuant to section 120.57(1)(c), Florida Statutes:

Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.

The parties timely filed proposed recommended orders that have been fully considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. Petitioner immigrated to the United States from Cuba in 1980.

2. In April of 1982, Petitioner resided in Cocoa, Florida, within walking distance of his employer, Armor Flite Southeast.

3. Mary Sue Cobb, the victim of a murder, also lived in the area near Petitioner's home and Armor Flite Southeast.

4. Petitioner and Mrs. Cobb knew one another. Prior to April 23, 1982, Petitioner had placed an Amway order with the victim and her husband. The Cobbs sold Amway products and solicited Petitioner to purchase items and/or become a salesperson for the company.

5. Prior to April 23, 1982, Petitioner had been at the Cobb residence five or six times. Petitioner had been inside the Cobb home.

6. For the two days prior to April 23, 1982, Petitioner had been sick, unable to go to work, and had not been at the Armor Flite Southeast property.

7. At all times material to this case, Manuel Ruiz was the general manager at Armor Flite Southeast. Mr. Ruiz served as Petitioner's supervisor. From the Armor Flite Southeast property, it was possible to view the Cobb residence.

8. On the morning of April 23, 1982, Petitioner told his wife he was going to work. Petitioner did not, however, enter the Armor Flite property at the beginning of the work day when Mr. Ruiz opened the shop at approximately 6:45 a.m.

9. Moreover, Mr. Ruiz did not see Petitioner at the Armor Flite Southeast property until he came to pick up his check at 11:30 a.m. or noon on April 23, 1982.

10. Instead of a paycheck, Mr. Ruiz gave Petitioner a letter on April 23, 1982, that notified him he was being laid off effective April 21, 1982. Armor Flite Southeast was in Chapter 11 and the trustee for the company gave Mr. Ruiz a list of four persons who were to be laid off. Petitioner was among those four. Petitioner was invited to attend a meeting with the trustee on April 23, 1982, at approximately 3:30 p.m. In theory, the employees were being laid off due to lack of work, but they could be re-hired if the work volume improved. Mr. Ruiz

explained the foregoing to Petitioner. Mr. Ruiz and Petitioner had no difficulty communicating as both men were fluent in Spanish.

11. At some time after the meeting with Mr. Ruiz, Petitioner returned home and was there when family members came over later in the afternoon.

12. During the morning of April 23, 1982, Mrs. Cobb was murdered.

13. Following an investigation of the crime, Petitioner was charged with the first degree murder of Mrs. Cobb, was convicted, and was incarcerated. Subsequent to the conviction and sentencing, Petitioner's conviction was overturned and his case was remanded for a new trial. The second trial resulted in an acquittal on April 24, 1987.

14. On June 28, 2010, Petitioner filed a petition for compensation and alleged he is entitled to relief pursuant to chapter 961, Florida Statutes.

15. An Amended Petition was filed on October 20, 2010, and resulted in an order entered May 13, 2013, by Circuit Court Judge Charles Roberts that provided as follows:

The Defendant's [Petitioner herein] Amended Petition to Victims of Wrongful Incarceration Compensation Act shall be transferred to the Division of Administrative Hearings for findings of fact and a recommended determination of whether the Defendant has

established that he is a wrongfully incarcerated person who is eligible for compensation.

CONCLUSIONS OF LAW

16. DOAH has jurisdiction over the parties to and the subject matter of these proceedings. §§ 120.57(1) and 961.03(4) (b), Fla. Stat.

17. Section 961.03, Florida Statutes, provides, in part:

(4) (b) If the prosecuting authority responds as set forth in paragraph (2) (b), and the court determines that the petitioner is eligible under the provisions of s. 961.04, but the prosecuting authority contests the nature, significance or effect of the evidence of actual innocence, or the facts related to the petitioner's alleged wrongful incarceration, the court shall set forth its findings and transfer the petition by electronic means through the division's website to the division for findings of fact and a recommended determination of whether the petitioner has established that he or she is a wrongfully incarcerated person who is eligible for compensation under this act.

(5) Any questions of fact, the nature, significance or effect of the evidence of actual innocence, and the petitioner's eligibility for compensation under this act must be established by clear and convincing evidence by the petitioner before an administrative law judge.

18. Petitioner bears the burden of proof in this matter to establish he is entitled to the relief sought by clear and convincing evidence. Clear and convincing evidence "requires more proof than a 'preponderance of the evidence' but less than 'beyond and to the exclusion of a reasonable doubt.'" In re

Graziano, 696 So. 2d 744, 753 (Fla. 1997). This intermediate standard requires evidence that is credible, facts must be distinctly remembered, testimony must be precise and explicit, and witnesses must be clear and unambiguous. See In re Davey, 645 So. 2d 398 (Fla. 1994). To meet this burden, the evidence must be of such weight that it produces in the mind of the trier of fact a firm belief as to the truth of the allegations sought to be established. See Slomowitz v. Walker, 429 So. 2d 797 (Fla. 4th DCA 1983). When evidence is ambiguous, this standard is not met. Westinghouse Electric Corp., Inc. v. Shuler Bros., Inc., 590 So. 2d 986 (Fla. 1st DCA 1991). In this case, Petitioner failed to meet this difficult burden.

19. Section 961.02(4), Florida Statutes, defines "wrongfully incarcerated person" as:

[a] person whose felony conviction and sentence have been vacated by a court of competent jurisdiction and, with respect to whom pursuant to the requirements of s. 961.03, the original sentencing court has issued its order finding that the person neither committed the act nor the offense that served as the basis for the conviction and incarceration and that the person did not aid, abet, or act as an accomplice or accessory to a person who committed the act or offense.

20. Section 961.03, Florida Statutes, provides, in pertinent part:

(1)(a) In order to meet the definition of a "wrongfully incarcerated person" and "eligible for compensation," upon entry of an

order, based upon exonerating evidence, vacating a conviction and sentence, a person must set forth the claim of wrongful incarceration under oath and with particularity by filing a petition with the original sentencing court, with a copy of the petition and proper notice to the prosecuting authority in the underlying felony for which the person was incarcerated. At a minimum, the petition must:

1. State that verifiable and substantial evidence of actual innocence exists and state with particularity the nature and significance of the verifiable and substantial evidence of actual innocence; and

2. State that the person is not disqualified, under the provisions of s. 961.04, from seeking compensation under this act. (emphasis added).

21. In order to establish that he meets the criteria for a "wrongfully incarcerated person," Petitioner must establish he is eligible for compensation pursuant to section 961.04, Florida Statutes. Pursuant to that law:

A wrongfully incarcerated person is not eligible for compensation under the act if:

(1) Before the person's wrongful conviction and incarceration, the person was convicted of, or pled guilty or nolo contendere to, regardless of adjudication, any felony offense, or a crime committed in another jurisdiction the elements of which would constitute a felony in this state, or a crime committed against the United States which is designated a felony, excluding any delinquency disposition;

(2) During the person's wrongful incarceration, the person was convicted of, or pled guilty or nolo contendere to,

regardless of adjudication, any felony offense; or

(3) During the person's wrongful incarceration, the person was also serving a concurrent sentence for another felony for which the person was not wrongfully convicted.

In this case, Petitioner has shown by clear and convincing evidence that he meets the eligibility standard. Petitioner's record from Cuba and his testimony support this conclusion.

22. Disputed in this case is whether Petitioner murdered a female victim on the morning of April 23, 1982. In order to meet the definition of a wrongfully incarcerated person, Petitioner must establish by clear and convincing evidence he is actually innocent of that crime. He did not. Petitioner claimed he was at home in bed with his wife at the time of the crime. His account of the day of the murder and his wife's statement of the timeline for that day are not credible. Given the totality of the testimony presented at hearing, it is concluded Petitioner failed to establish by clear and convincing evidence that he was actually innocent of the crime. Petitioner's claim of innocence relied on his credibility. Based upon his evasive manner and inconsistencies with the testimony of Mr. Ruiz, it is concluded Petitioner was not forthright in the description of his activities on the day of the murder. That Petitioner was acquitted of the crime does not establish actual innocence. That someone else could also have been involved in the crime does not

establish actual innocence. Petitioner presented no credible, persuasive, exonerating evidence to support his actual innocence.

23. An appellate court may reverse a criminal judgment for a number of reasons. In this case, it did so because of trial errors that led to Petitioner's conviction. The reversal does not determine that this Petitioner was actually innocent. As held in Fessenden v. State, 52 So. 3d 1 (Fla. 2d DCA 2010), an order vacating a conviction and sentence on the legal ruling of the appellate court is not an order "based upon exonerating evidence," as required by section 961.03, Florida Statutes.

24. Besides the self-serving and incredible testimony of Petitioner and his wife, no evidence of actual innocence was presented. The standard in this case is very strict. An acquitted party cannot unilaterally claim innocence and thereby open the coffers of the public treasury.

25. Petitioner's claim that Respondent destroyed evidence that would have supported his innocence is also discredited. Throughout the proceedings, Petitioner objected to hearsay offered by Respondent to support its case. Such objections were noted and the undersigned has made great effort to assure that the findings reached herein are supported by the testimony offered at the hearing of this case and not inadmissible hearsay. All of the evidence Petitioner claims would support a finding that Respondent destroyed evidence is hearsay. At best, someone

told someone the evidence was destroyed. Petitioner's descriptions of the "destroyed evidence" are not supported by admissible evidence presented at hearing.

RECOMMENDED DETERMINATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that an order be entered by the circuit court that Petitioner failed to establish actual innocence of the crime for which he was incarcerated.

DONE AND ENTERED this 4th day of March, 2014, in Tallahassee, Leon County, Florida.



J. D. PARRISH
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 4th day of March, 2014.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.