

IN THE SUPREME COURT OF IOWA

JACOB LEE SCHMIDT,)
)
 Applicant-Appellant,)
)
 v.) SUPREME COURT 15-1408
)
 STATE OF IOWA,)
)
 Respondent-Appellee.)

APPEAL FROM THE IOWA DISTRICT COURT
FOR WOODBURY COUNTY
HONORABLE EDWARD A. JACOBSON, JUDGE

AMICUS BRIEF OF THE EXONERATION PROJECT AT THE
UNIVERSITY OF CHICAGO LAW SCHOOL

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CERTIFICATE OF SERVICE

On the 4th day of January, 2017, the undersigned certifies that a true copy of the foregoing instrument was served upon Applicant-Appellant by placing one copy thereof in the United States mail, proper postage attached, addressed to Jacob Lee Schmidt, 2123 Bryan Street, Sioux City, IA 51103 and that all other parties were served electronically through EDMS.

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INTEREST OF PROPOSED AMICUS CURIAE

The issue before this Court is whether a convicted defendant may seek post-conviction relief claiming his actual innocence pursuant to the “interest of justice” provision in Iowa Code section 822.2(1)(d) when the conviction was the result of a guilty plea. Both the lower court and the appellate court indicated he could not because the Defendant waived all substantive challenges to his conviction due to the plea.

The Exoneration Project has a “unique perspective” on this issue. *See* Iowa R. App. Proc. 6.906(4)(a)(3). Based out of the University of Chicago Law School, the Exoneration Project is dedicated to the representation of the wrongfully convicted. Exoneration Project attorneys are based in Chicago and work primarily on Illinois cases, but they also represent individuals in jurisdictions throughout the United States.

The two noted attorneys from the Exoneration Project, together, have been involved in the exonerations of seven different individuals from Illinois who pled guilty despite their innocence. Because of this experience, the Exoneration Project

has a unique understanding of the importance of giving access to the courts to innocent individuals who plead guilty.

ARGUMENT

According to the National Registry of Exonerations, there have been 177 post-conviction exonerations in Illinois.¹ In seventeen of those cases, or roughly 10%, the individual pleaded guilty to the offense despite his innocence.²

¹ Nat'l Registry of Exonerations, Browse the Cases – Sorted by Illinois Cases, available at https://www.law.umich.edu/special/exoneration/Pages/detaillist.aspx?SortField=P_x002f_FA&View={faf6eddb-5a68-4f8f-8a52-2c61f5bf9ea7}&FilterField1=ST&FilterValue1=IL&&SortField=P_x002f_FA&SortDir=Desc (last checked Dec. 19, 2016).

Exoneration Project client Lionel White was exonerated last Wednesday, December 14, 2016, in the Cook County (Illinois) Circuit Court. He is expected to be added to the registry shortly, at which point the total number will be 178.

² Nat'l Registry of Exonerations, Browse the Cases – Sorted by Illinois Cases, Guilty Pleas, available at https://www.law.umich.edu/special/exoneration/Pages/detaillist.aspx?SortField=P_x002f_FA&View={faf6eddb-5a68-4f8f-8a52-2c61f5bf9ea7}&FilterField1=ST&FilterValue1=IL&SortDir=Desc&FilterField2=Group&FilterValue2=P (last checked Dec. 19, 2016).

The conviction of Lionel White was also the result of a guilty plea. *See supra* note 1. Accordingly, the total number of Illinois guilty plea exonerations is actually 18.

Exoneration Project attorneys have been involved in obtaining relief for seven of those individuals.

Recognizing the reality that innocent individuals do plead guilty, on August 15, 2014, the Illinois legislature amended its post-conviction forensic (DNA) testing statute to allow those who pleaded guilty an opportunity to develop forensic evidence of their innocence. 725 Ill. Comp. Stat. Ann. 5/116-3 (West 2014), P.A. 98-948, effective August 15, 2014 (amending 725 ILCS 5/116-3 to include individuals who pled guilty); *see also* Steve Mills, *New law to help inmates prove innocence with DNA tests*, Chi. Trib. June 23, 2014³ (quoting Bill Sponsor Kwame Raoul as saying “the legislation recognizes that sometimes innocent defendants plead guilty to avoid a more severe punishment” and noting that Illinois was the “45th state to allow inmates who pleaded guilty to seek DNA testing”).

Illinois also has three post-conviction statutory vehicles that can be invoked in an attempt to overturn criminal

³ This article is available at <http://www.chicagotribune.com/news/ct-dna-guilty-pleas-met-20140623-story.html> (last accessed Dec. 19, 2016).

convictions; all three have been utilized to vacate convictions that were the result of guilty pleas. See *People v. Whirl*, 2015 IL App (1st) 111483 (vacating the Petitioner’s guilty plea 25 years after his conviction pursuant to the Post-Conviction Hearing Act, 725 Ill. Comp. Stat. Ann. 5/122-1 et seq. (West 2014); *People v. Barr*, 95 CR 28699, Memorandum Opinion and Order, Circuit Court of Cook County, June 5, 2013 (on file with the Exoneration Project) (vacating guilty plea “to correct a manifest injustice under the facts involved” 15 years after conviction utilizing both the Post-Conviction Hearing Act, 725 Ill. Comp. Stat. Ann. 5/122-1 (West 2012), and/or the Illinois Habeas Corpus Act, 735 Ill. Comp. Stat. Ann. 5/10-101 et seq. (West 2012); *People v. Thames et al.*, No. 95 CR 9676, Order of the Circuit Court of Cook County, Nov. 16, 2011 (on filed with the Exoneration Project) (utilizing 735 Ill. Comp. Stat. Ann. 5/2-1401 (West 2010), or a petition for relief from judgment, to vacate a conviction 13 years after a guilty plea); *People v. Lawton*, 212 Ill. 2d 285, 298-99 (2004) (calling 735 Ill. Comp. Stat. Ann. 5/2-1401 a “versatile and effective means of

pursuing justice” and noting that “[r]elief should be granted under section 2-1401 when necessary to achieve justice”).

To illustrate the reality of innocent individuals pleading guilty—and the necessity of providing access to the courts for those individuals—*Amici Exoneration Project* briefly describes the seven cases in which it has been intimately involved where innocent individuals pled guilty, and were later exonerated.

Ben Baker and Clarissa Glenn⁴

Ben Baker was wrongfully convicted twice. On March 23, 2005, he was targeted for arrest and framed by corrupt Chicago Police Sergeant Ronald Watts and his tactical team. These corrupt officers planted nearly 30 grams of narcotics on Baker. While on bond awaiting trial, Baker and his wife, Clarissa Glenn, attempted to expose these rogue officers to multiple law enforcement agencies. In retaliation, on December 11, 2005, Sergeant Watts and his team falsely arrested Baker and his

⁴ Nat’l Registry of Exonerations, Clarissa Glenn, https://www.law.umich.edu/special/exoneration/Pages/case_detail.aspx?caseid=4864 (last accessed Dec. 19, 2016). Other pleadings and orders on file with the Exoneration Project.

wife, Clarissa Glenn. This time, the corrupt police officers planted over 50 bags of heroin on them.

In May and June 2006, Baker had a bench trial related to his March 2005 arrest. He testified to the police corruption; four officers, including Sergeant Watts, testified Baker was lying. Baker was convicted and sentenced to 14 years in prison.

Baker and Glenn's defense to the December 2005 arrest was identical and the exact same police officers were set to testify against them in front of the same circuit court judge. Because of the amount of drugs planted on them, both were facing mandatory prison time, meaning their three school-aged children would be left without any parent to care for them if Glenn were convicted as charged. Therefore, when the State offered to reduce the charges and sentence Glenn to probation if both pleaded guilty, Baker and Glenn reluctantly took the deal. Baker was sentenced to an additional four years in prison, and Glenn received one year of probation.

In December 2015, Baker sought post-conviction relief on his first conviction. Exoneration Project attorneys attached four

inches of law enforcement investigative documents and sworn testimony from whistleblowing police officers. These documents demonstrated Sergeant Watts and his tactical team had engaged in a decade-long criminal enterprise that involved routinely framing innocent individuals who either refused to bribe them or attempted to expose them. Many of the attached documents were from the FBI investigation that led to Watts' federal conviction in 2013.

Just one month after being made aware of the full scope of the Watts-led corruption, in January 2016, the Cook County State's Attorney's Office filed its own petition pursuant to 735 Ill. Comp. Stat. Ann. 5/2-1401, agreeing that Baker's conviction must be vacated. Baker was released from prison after nearly 10 years; he was certified innocent one month later. *See* 735 Ill. Comp. Stat. Ann. 5/702 (West. 2016).

On March 17, 2016, Baker and Glenn jointly moved to withdraw their guilty pleas and vacate their convictions in the second case from December 2005, pursuant to 735 Ill. Comp. Stat. Ann. 5/2-1401 (West. 2016). Just six days later, at the

first court date, the prosecutor agreed and the court vacated the convictions. Both Baker and Glenn subsequently were found factually innocent by the circuit court.

Shainnie Sharp, Robert Veal, and the “Dixmoor Five”⁵

Attorneys from the Exoneration Project represented James Harden and Robert Taylor⁶ in post-conviction litigation, two individuals who later became part of what was dubbed the “Dixmoor Five.” The cases involved the abduction, rape and murder a 14-year-old girl in suburban Dixmoor in 1991. Following false confessions from teenagers Sharpe, Taylor, and Veal in November 1992 that also implicated teenager Harden and his younger brother Jonathan Barr, the five boys were charged with crimes that included sexual assault and murder.

⁵ Nat’l Registry of Exonerations, Shainnie Sharp, https://www.law.umich.edu/special/exoneration/Pages/case_detail.aspx?caseid=3839 (last accessed Dec. 19, 2016). Other pleadings and orders on file with the Exoneration Project.

⁶ Attorney Tepfer represented Taylor while with the Center on Wrongful Convictions of Youth at Northwestern University School of Law, while Attorney Thompson represented Harden with the Exoneration Project. Attorney Tepfer later joined the Exoneration Project in 2015.

As the case was pending, prosecutors offered to drop sexual assault charges against Sharpe and Veal in exchange for their testimony against the other three boys and an agreed sentence of twenty years in prison (for which they would likely serve ten). Both agreed, and both testified (falsely) against the other three at their respective trials. Barr, Harden, and Taylor were all convicted and sentenced to prison for what amounted to the rest of their lives.

Nearly two decades later, the three convicted Defendants initiated proceedings to retest DNA from the 14-year-old victim's rape kit. That testing identified a serial rapist named Willie Randolph. In November 2011, nearly twenty years to day of the young girl's abduction, Barr, Harden, and Taylor were released from prison. Although Sharpe and Veal had already completed their sentences, their convictions, too, were vacated weeks later. Each who applied was later certified innocent. And in August 2016, Willie Randolph was charged with murder, kidnapping, and predatory sexual assault.

Vincent Thames and the “Englewood Four”⁷

Attorneys from the Exoneration Project represented Harold Richardson and Terrill Swift⁸ in post-conviction litigation, two individuals who later became part of what was dubbed the “Englewood Four.” On November 7, 1994, Nina Glover’s body was found in a dumpster in the Englewood section of Chicago. Ms. Glover was a troubled woman known to engage in drug use and prostitution. Four months later, in March 1995, five teenagers, including Thames, Swift, Richardson, Michael Saunders, and Jerry Fincher falsely confessed to her sexual assault and murder. All were eventually convicted, save for Fincher whose confession was thrown out and charges were eventually dropped. After the trials, convictions, and 40-year aggregate sentences of Richardson

⁷ Nat’l Registry of Exonerations, Vincent Thames, https://www.law.umich.edu/special/exoneration/Pages/case_detail.aspx?caseid=3844 (last accessed Dec. 19, 2016). Other pleadings and orders on file with the Exoneration Project.

⁸ Attorney Tepfer represented Swift while with the Center on Wrongful Convictions of Youth at Northwestern University School of Law, while Attorney Thompson represented Richardson with the Exoneration Project. Attorney Tepfer later joined the Exoneration Project in 2015.

and Saunders, Thames pled guilty in exchange for a 30-year aggregate sentence.

In 2010, the four convicted defendants initiated post-conviction DNA testing, including of the rape kit of the victim. That testing identified Johnnie Douglas, a serial rapist and convicted murderer who had an identified pattern of preying on troubled women like Ms. Glover. By the time of the DNA hit, Douglas had been murdered.

All four defendants' convictions were vacated, and all were later certified innocent. The Circuit Court of Cook County rejected the prosecution's specific objections to relief for Thames based on his guilty plea, holding that Thames was entitled to the same relief as the others who went to trial.

Shawn Whirl⁹

The Exoneration Project and other Chicago attorneys represented Shawn Whirl, whose conviction for a 1990 murder was vacated in 2015. Despite pleading guilty, his conviction was ultimately overturned because, in the words of an Illinois Appellate Court, “the State’s case was nonexistent.” *People v. Whirl*, 2015 IL App (1st) 111483, ¶109.

Billy Williams, a Chicago cab driver, was discovered shot to death in a desolate area of the city. Shawn Whirl’s fingerprints were among numerous sets of fingerprints on the outside of the cab (he testified at a later court proceeding that he had taken a cab, possibly Williams’, earlier that day) but he alone was arrested for this crime. He was then taken to the police station and interrogated by a detective, James Pienta, who was part of the crew of notorious Chicago police officer Jon Burge. Whirl then gave a confession that he has consistently maintained was the product of torture. He testified at a motion

⁹ Nat’l Registry of Exonerations, Shawn Whirl, https://www.law.umich.edu/special/exoneration/Pages/case_detail.aspx?caseid=4770 (last accessed Dec. 19, 2016). Other pleadings and orders on file with the Exoneration Project.

to suppress in 1991, testimony corroborated by his mother and brother, that the detective slapped and stepped on him and scraped a set of keys across a wound on his leg. Because neither he nor the courts knew about the history of misconduct by Burge and his detectives, the trial court denied his motion to suppress his confession.

On the day that a capital trial was to begin, Whirl pleaded guilty on the advice of counsel. When asked what he had to say, he responded, “The thing I have to say is for the reason I’m taking this plea is for the simple fact that I didn’t do it. I have to say I didn’t do it.... I didn’t do it.” The only evidence the state relied on as a factual basis for the plea was his confession and his fingerprints on the cab.

When evidence about James Pienta and Jon Burge later came to light, Shawn Whirl was incarcerated. He filed a petition for post-conviction relief pursuant to 725 Ill. Comp. Stat. Ann. 5/122-1, and also received an evidentiary hearing through the Illinois Torture Inquiry & Relief Commission Act, 775 Ill. Comp. Stat. Ann. 40/1, *et seq.* (West. 2012). At that hearing, James

Pienta exercised his Fifth Amendment rights and refused to answer questions about whether he had tortured Shawn Whirl. As the Illinois appellate court recognized, “it is impossible to conceive of how the [prosecution] could prevail at a new suppression hearing with the officer alleged to have coerced a suspect’s confession invoking his privilege against self-incrimination.” *Whirl*, 2015 IL App. (1st) 111483, at ¶110. “Without Whirl’s confession, the State’s case was nonexistent” *Id.* at ¶109.

On remand, rather than retry Whirl, the State *nolled* all charges against Whirl, and the Circuit Court of Cook County vacated his conviction and sentence on October 13, 2015. Whirl was released from prison on October 14, 2015. He is currently pursuing a certification of his innocence.

Lionel White¹⁰

¹⁰ *People v. Lionel White*, No. 06 CR 12092 (pleadings and orders on file with the Exoneration Project); see also Steve Schmadeke, *Drug conviction dropped in case linked to corrupt Chicago cop*, Chi. Trib., Dec. 14, 2016; Jason Meisner, *Another questionable arrest by corrupt Chicago cop could be thrown out*, Chi. Trib., Dec. 14, 2016.

Like Ben Baker and Clarissa Glenn, Lionel White was also a victim of the corruption of Sergeant Ronald Watts and his tactical team. In April 2006, White was in his home when Watts and his partner, Alvin Jones, knocked on his door. Upon answering, Jones immediately beat White, leading to his hospitalization. Watts and Jones, moreover, planted 100 bags of narcotics on White. Prosecutors initiated serious drug charges against White and, were he convicted of the charged offenses, White would have been sentenced to a mandatory term of life without parole.

At his very first substantive court date, the prosecutor offered White a one-time-only offer of reduced charges and a five-year sentence in exchange for a guilty plea. White accepted, but not before telling the judge:

“[The police] was in my house beating me and I went to the hospital, your Honor. This is wrong. I am pleading guilty because I’m scared. That’s the honest to God truth, your Honor. . . . I don’t have no problem if I done it, I will do the time. But I am scared. That’s why I am taking the time, your Honor.”

See Whirl, 2015 IL App (1st) 111483, at ¶31-33.

Earlier this fall, based upon the same substantive evidence that exonerated Ben Baker (twice) and Clarissa Glenn, White moved to vacate his guilty plea and overturn his conviction pursuant to 735 Ill. Comp. Stat. Ann. 5/2-1401 (West 2016). The State agreed, and on December 14, 2016—or more than ten years after his conviction and long after he completed his sentence—White was exonerated.

CONCLUSION

The publicly-filed documents reviewed by the Exoneration Project in this case suggest that there are stark similarities to Jacob Lee Schmidt’s case and that of Brian Banks, a budding California football star who, also as a teenager, was falsely accused of rape, pleaded guilty, and was later exonerated when the accuser recanted.¹¹ Access to the courts for Schmidt is necessary to determine whether, like in Banks’ case, the

¹¹ Nat’l Registry of Exonerations, Brian Banks, https://www.law.umich.edu/special/exoneration/Pages/case_detail.aspx?caseid=3901 (last accessed Dec. 19, 2016); CBS News, 60 Minutes: Blindsided: the Exoneration of Brian Banks, available at: <http://www.cbsnews.com/news/blindsided-the-exoneration-of-brian-banks/>.

recantation of the alleged victim is reliable and Schmidt is actually innocent. The Exoneration Project's collective experience, as documented within this brief, has demonstrated how essential it is that there is some access to the courts for innocent individuals that plead guilty.

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