

Wilton Dedge Awarded \$2 Million For 22 Years Wrongful Imprisonment

by Hans Sherrer



Wilton Dedge was convicted of rape in 1982 and sentenced to 30 years in prison. After the victim described her attacker to police as 6' and 160 pounds, she picked the 5'-5" and 125 pound Dedge out of a photo array. The jury disbelieved the six alibi witnesses who swore that he was at a garage 45 minutes from the rape scene. After Dedge's conviction was reversed in 1983, he was again wrongly convicted in 1984 and sentenced to life in prison.

Florida doesn't have a wrongful conviction compensation statute, so in January of 2005 it was announced that several state senators would sponsor a special-claims bill awarding Dedge \$4.9 million for lost wages, wrongful imprisonment and costs incurred by his family and lawyers.

However the legislature adjourned in May without passing a bill compensating Dedge. Opponents of the bill said Dedge should seek compensation by suing the state instead of through a "claims" bill in the legislature.

After the legislature's inaction, Dedge filed a lawsuit in the Brevard County Circuit Court on May 27, 2005, that named the State of Florida and state Dept. Of Corrections Secretary James Crosby Jr. as defendants, and Dedge and his parents, Walter and Mary Dedge, as plaintiffs. Dedge's parents were plaintiffs in the lawsuit because they were seeking reimbursement for spending all the money in their retirement account defending their son. The suit was based on the "takings" clause of Florida's Constitution. Dedge alleged in his suit that for 22 years the State of Florida had illegally "taken" his constitutionally protected liberty.

The taking of Dedge's liberty was compounded by his prosecutors response to his efforts that began in 1988 to have DNA testing performed on crime scene evidence. His prosecutors successfully opposed the DNA testing for 16 years. Dedge's lawsuit stated that if the state had not opposed the testing, it would have resulted in him being saved from "16 additional years in prison, saved the state from the expense of imprisoning an innocent man and the expense of extensive litigation the state undertook to prevent the testing."

The state filed a motion to dismiss the lawsuit on the grounds that Dedge's "taking" argument was a novel legal theory designed to get around

the sovereign immunity of the state from personal injury suits. During a hearing on August 19, 2005, the state's attorney, Ron Harrop, argued that under Florida's constitution "takings" applied to land and property seized by the government in eminent domain cases, not the deprivation of personal liberty. He said, "Property was not taken in this case, liberty was taken and liberty is protected by due process." Harrop conceded that Dedge had suffered personally, but "The law does not guarantee a system free of errors, it simply guarantees a system of due process." He added, "No matter how much empathy we have, no matter how much sympathy we have, no matter how much desire we have to somehow go back and undo what has happened, we must not take the principles of law, that have been the foundation of our jurisprudence, away."¹

Harrop argued that Dedge's remedy was to seek compensation from Florida's legislature.

Leon County Circuit Judge William Gary agreed with the state's argument that it was immune from lawsuits for personal compensation. On August 30, 2005, Judge Gary issued his three-page ruling dismissing Dedge's lawsuit, in which he wrote, "While everyone is in agreement that what happened to Wilton Dedge is tragic, only the Legislature can address the issue of compensation under existing law."²

Sandy D'Alemberte, a former president of Florida State University handling Dedge's case pro bono, responded to the dismissal with frustration, "They just keep dragging this out. The Legislature told us to go to the courts, and now the court is telling us to go to the Legislature. It's like a pingpong ball."³

Mary Dedge, Wilton's mother said, "Wilton is just so disappointed and frustrated."⁴ She said Dedge was getting by financially by mowing lawns, trimming trees and doing other odd jobs.

Dedge appealed the dismissal to the 1st District Court of Appeal in Tallahassee. D'Alemberte said the appeal was being pursued because, "As I read the constitution, where there's a wrong, there'll be a remedy. That's what the courts are for."⁵

After the lawsuit was dismissed, the media in Florida led a drumbeat that the legislature should compensate Dedge. The Florida legislature finally responded in early December 2005. The state Senate voted 39-0 in favor of a special-claims bill authorizing payment of \$2 million to Dedge for loss of liberty, lost wages and legal fees. The bill (SB 12B) also

includes 120 hours of free tuition to a Florida state college or university. The House of Representative then voted 117-2 to approve the bill. Payment under the bill is conditional on Dedge dropping his lawsuit.

Representative Don Brown was one of the two representatives who voted against the bill. He explained his nay vote by saying:

"It was out of fear that we may have set a dangerous precedent. I don't minimize at all the horror that Mr. Dedge went through. But I also recognize that the prosecution and American system of jurisprudence doesn't grant a perfect outcome but a fair one. I am yet to be convinced that the citizens should pay restitution when there is no real allegation of wrongdoing."⁷

House Speaker Allan Bense was the person who had blocked passage of the Dedge's claim bill in the previous legislative session. He publicly apologized to Dedge for his obstruction:

"You know, we could have passed this bill last session. And I stopped it... because I wasn't convinced at the time that it was the right thing to do. I hope that you'll accept my apologies. You're a bigger man than I am. And I humbly ask that you accept my apology for not getting this done sooner."⁸

The bill provides for payment of an unspecified lump sum plus an annuity designed to shield Dedge from paying excessive taxes. The details of those payments was to be worked out between Dedge and the state's Department of Financial Services.

Florida Governor Jeb Bush agreed compensating Dedge was "the right thing to do," and he signed the bill authorizing the payments on December 14, 2005.

JD Note: Sandy D'Alemberte represented Dedge pro bono as a special counsel to the Miami office of Hunton & Williams, a large law firm with offices around the world. Hunton & Williams also provided their services to Dedge pro bono.

Source: Wrongly Convicted Man Sues Florida, AP story, *Tallahassee Democrat*, May 29, 2005. Senate to Look at Compensation for Wrongly Convicted, Jackie Hallifax, *Florida Today*, February 19, 2005.

Endnotes and additional sources:

1 Lawyer: Dedge can't sue state, Paul Flemming, *Florida Today*, August 20, 2005.

2 Judge rejects lawsuit filed by Brevard man, Laurin Sellers, *Orlando Sentinel*, August 31, 2005.

3 *Id.*

4 *Id.*

5 Innocent man plans to appeal, James L. Rosica, *Tallahassee Democrat*, September 5, 2005.

6 *Id.*

7 Wrongly convicted man to get \$2 million in state restitution, Dara Kam, *The Palm Beach Post*, December 09, 2005.

8 *Id.*