

CA Awards Peter Rose \$328,000 For Ten Years Wrongful Imprisonment

By JD Staff



Peter Rose was convicted in 1995 of kidnapping and raping a 13-year-old girl in Lodi, California. He was sentenced to 27 years in prison. The prosecution's key evidence was the girl's identification of Rose. She testified Rose was the man who punched her in the face as she walked to school, and then dragged her into an alley where he raped her.

In 2003 Rose contacted the Northern California Innocence Project at Golden Gate University in San Francisco, and requested their help in testing the attacker's semen found in the victim's underwear. They accepted his case, and in June 2004 secured a court order for a DNA test of the semen. The test excluded Rose as the source. The girl — who didn't identify Rose until three weeks after the attack and after multiple intense sessions with Lodi detectives — also recanted her identification of Rose. In recanting, the victim, now in her early 20s, said she didn't actually see her attacker but was pressured by the detectives to identify Rose. In October

2004, a San Joaquin County Superior Court judge declared Rose was "factually innocent" and ordered his release. Rose had been falsely imprisoned for almost ten years.

Rose filed a claim for restitution under California's compensation law that provides for \$100 per day from the date of a wrongful conviction. San Francisco attorney Ray Hasu represented Rose. He filed a 4-inch-thick claim to meet what he described as the law's "very high threshold" of requiring Rose to independently prove his innocence, to show he didn't do anything that contributed to his conviction, and that he suffered financially.

On October 20, 2005, the Victim Compensation and Government Claims Board voted unanimously to award Rose \$328,000 for the 3,280 days he had been wrongly imprisoned after his conviction. Rose had been unable to post his \$100,000 pretrial bail, and he also claimed compensation for the 318 days he spent jailed prior to his conviction. However, that claim was denied because the state law specifies compensation begins from the day of conviction — not arrest. Before it can be paid the award must be approved by the California legislature and then Governor Schwarzenegger, but in the past they have gone along with the Board's decision.

Rose, now 37, is the father of three children who were taken care of by his mother while he was imprisoned. After his release he worked in construction and on a fishing boat to support his children and mother — who has been diagnosed with bone cancer.

Peter Rose Seeks Millions in Federal Lawsuits

By JD Staff

Less than two weeks after being awarded \$328,000 under California's compensation statute for 10 years imprisonment after a wrongful rape conviction, Peter Rose filed a total of four federal civil rights lawsuits seeking millions in compensatory and punitive damages.

Filed in U.S. District Court in Sacramento in November 2005, the suits name a number of defendants, including the City of Lodi, San Joaquin County, the State of California, Rose's court-appointed defense attorney, two Lodi Police Department officers, and a technician employed by the California Department of Justice Crime Lab in San Joaquin County.

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After notified the compensation was approved, Rose's attorney Hasu said, "There's no way you can compensate someone for having been deprived of their life."

California has awarded compensation to twelve wrongly convicted people out of 55 claims filed since 1981.

Source: Man Wrongly Convicted in Rape to Get \$328,000, AP, *The Mercury News*, October 21, 2005. State Board Give \$328,000 to man for imprisonment, M.S. Enkoji (*Sacramento Bee*), *Contra Costa Times*, October 22, 2005.

Dimitre Dimitrov Acquitted After Murder Retrial

By Katherine E. Oleson

Dimitre Dimitrov was acquitted on October 29, 2005, after his retrial for the February 1996 murder of his friend and landlord, Hristo Veltchev. The trial in Ottawa, Canada lasted 11 days, and the jury deliberated for 12 hours. He is reportedly the first defendant acquitted in Ottawa in seven years.

The decision to charge Dimitrov, a Bulgarian refugee, was logically unsound — there were no eyewitnesses to Veltchev's murder the time of his death was difficult to determine, and Dimitrov did not have a motive. Veltchev's murder seemed to have involved some planning and maliciousness: He was bludgeoned to death in the garage of his home and stuffed into the trunk of his car, which was then driven to a public parking lot where it



Dimitre Dimitrov and his two lawyers, Richard Auger (L) and Vincent Clifford (R), after his acquittal.

was left. The bloodstains on the garage floor had been cleaned up and covered with sand.

Two other Bulgarian immigrants, fellow boarder Dimitre Tzenev and the victim's wife, Faith Veltchev, were initially considered as suspects. Ms. Veltchev phone was wiretapped and she was arrested twice and extensively questioned, once after attempting to claim an insurance policy in the amount of \$50,000 two months following her husband's death, but charges were never brought against her. Tzenev — who had a criminal record, a history of domestic violence, and may have suspected Veltchev was having an affair with his wife — was charged with the

murder as Dimitrov's co-defendant. However, the charge against Tzenev was dismissed for lack of evidence after a preliminary hearing. Dimitrov was convicted by a jury after his 1999 trial and sentenced to life in prison with a minimum of 12 years imprisonment before being eligible for parole.

Dimitrov appealed, and in December 2003 the Ontario Court of Appeals reversed his conviction and ordered a new trial. The three-judge panel ruled "forensic" evidence used in his trial was unreliable and inadmissible. The evidence in question related to testimony about a blood stained pair of boots found in the front hall closet of the victim's boardinghouse. A DNA test concluded the victim's blood was on the boots, as was the blood of another person. Investigators determined that whoever wore the boots could have been standing within three feet of the victim. However the blood on the boot was excluded by the DNA test from matching Dimitrov or the other two suspects.

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The Death of Innocents: An eyewitness account of wrongful executions

By Sister Helen Prejean

Random House, 2005, 310 pages, hardcover

Review by Katherine E. Oleson

Sister Helen Prejean's second book, *The Death of Innocents: An eyewitness account of wrongful executions*, is equally as compelling as her first, *Dead Man Walking*. As the title suggests, Prejean looks at the death penalty from another angle: cases of innocent individuals accused of crimes and sentenced to death. Former Supreme Court Justice Blackmun's fear of "the gross injustice if an innocent man were sentenced to death..." has come true more than once.

Prejean weaves personal accounts, legal arguments and criticism together to paint a fuller

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accused — including the loss of his thriving business. He said, "Sally (his wife) and I are very disappointed with the judgement."⁸ His daughter Sabrina wasn't as restrained in her comments. In a radio interview days after the award was announced, she said, "I am completely outraged, and I do take it as a personal insult."⁹ She said that her father's experience in fighting the charges against him prior to his trial, his conviction and imprisonment, his quest to clear his name, and then his fight for compensation — all of which lasted for 12 years — has permanently altered his personality, "He is a different person now. He is completely obsessed with this case because he was so wronged, and he continues to be wronged and he was wronged again on October 12th."¹⁰

Endnotes:

1 Shocking Shortt Story, by Barry O'Kelly, GET SOURCE, August 11, 2002.

2 Daughter of Frank Shortt 'Outraged,' Irish Rights Watch, October 16, 2005.

3 *Id.*

4 Shocking Shortt Story, by Barry O'Kelly, GET SOURCE, August 11, 2002.

5 *Id.*

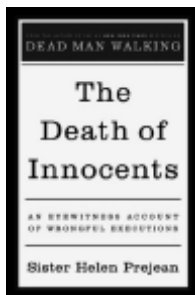
6 That is the dollar amount, since Ireland uses the Euro. The actual award was €1,923,871 (Euros). Based on an exchange rate of 1.1853 Euros per Dollar on December 23, 2005.

7 That is the dollar amount, since Ireland uses the Euro. The actual award amounts were €806,221 for losses related to Point Inn plus €550,000 in lost profits. It also included an award of €500,000 under the Criminal Procedure Act, exemplary damages of €50,000, and costs of €17,500. See, Shortt Awarded €1.93m for wrongful conviction, Irish Corruption website, October 13, 2005.

8 Nightclub owner disappointed at €1.9m payout, Irish News, October 12, 2005.

9 Daughter of Frank Shortt 'Outraged,' *supra*.

10 *Id.*



picture of what happened in the wrongful execution cases of two men she believes were truly innocent — Dobie Gillis Williams and Joseph Roger O'Dell.

Williams lived in rural Louisiana, and he was accused of raping and murdering a woman in 1984. His court-appointed lawyer neither investigated the prosecution's contrived crime scenario prior to his trial, nor challenged it during his trial. Williams was executed in 1997. Less than two years later the Supreme Court ruled it unconstitutional to execute a man with Williams' IQ of 65.

O'Dell was convicted in 1986 of rape and murder in Virginia, based largely on the testimony of a jailhouse informant. For more than ten years, O'Dell unsuccessfully sought court ordered DNA testing of crime scene evidence that might have proven his innocence. Supreme Court Justice Harry Blackmun disagreed with the Court's decision not to review his case, because he found "serious questions as to whether O'Dell committed the crime" and warned of "the gross injustice that would result if an innocent man were sentenced to death." O'Dell was executed in 1997. Virginia destroyed the evidence in 2000, so the truth will never be known.

Prejean legitimizes the voices of the accused by the seemingly sheer act of taking the time to ask questions and *listen* to the accused, Prejean brings attention to key pieces of evidence that had been ignored, disregarded, or not included by those at every stage of the judicial process. Sadly, as Prejean shows, these cases exemplify the many faults in the court systems across the United States.

Prejean writes in the preface, "I used to think that America had the best court system in the world. But now I know differently." Throughout the book, this revelation is illustrated. "When I first started visiting the condemned in 1982, I presumed the guilt of everyone on death row. I thought that an innocent person on death row would be a pure anomaly, a fluke. Not with all the extensive court reviews and appeals. Now, after working intimately with so many of the condemned and their attorneys, I know a lot better how the criminal justice system operates and how innocent people can end up on death row." (p. 9).

Prejean addresses many crime-related concerns in depth: contradictions in individual accounts of prosecution witnesses, coercion/hearsay of "confessions" by police, missing evidence from crime scenes, rationalizations used by lawyers and judges,

ridiculous prosecution scenarios with gaping holes in logic, and the list goes on.

Prejean dedicates a chapter to a thoughtful critique of Supreme Court Justice Scalia's support of "the machinery of death", particularly the reasoning he employs. In response to a statement by Justice Scalia that the death penalty is not a "difficult and soul-wrenching question", she states, "I find this morally troubling, because I can't help wondering how any human being could be called upon to decide life or death for his or her fellows and not break a moral sweat." (p. 173).

Once again, Prejean has brought attention to this debate through themes of dignity and respect for our fellow human beings that come forth in her writing. In a system ridden with flaws and injustices, she calls for public discourse and action on the death penalty. In her words, "Its practice demeans us all" (p. 270).

The Death of Innocents is available from The Innocents Bookshop at, <http://justicedenied.org/books.htm>.

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The suits make a variety of allegations that interrelate to portray the picture of how the systematic deprivation of Rose's rights to due process and a fair trial contributed to his wrongful conviction. Lodi Police detectives Matthew Foster and Ernest A. Nies Jr. are alleged to have coerced the rape victim to falsely identify Rose three weeks after the attack, and alleged to have failed to disclose exculpatory evidence that would have resulted in Rose's acquittal. Another allegation is San Joaquin County Deputy District Attorney Kevin Mayo "knew or should have known" that he coerced false testimony from the young victim when she identified Rose in court. Another allegation is DOJ Crime Lab technician Kathleen Cuila violated department protocol in the testing and analysis of fluid and hair samples. Other allegations are that Rose's court-appointed lawyer provided deficient representation, and that San Joaquin County randomly appointed the lawyer, who Rose alleges was unskilled and whose incompetence contributed to Rose's wrongful conviction.

The suit naming Cuila as a defendant seeks \$5 million in damages for Rose, and \$1 million each for his three children. The other suits don't specify damages.

Sources: Wrongly Convicted Man Seeking \$8 Million in Two New Lawsuits, *The Record*, Stockton, California, November 10, 2005.

Payback Sought For Years in Prison, *The Record*, Stockton, California, November 5, 2005.

Wrong Conviction Leads Former Lodi Resident to File Lawsuits, Layla Bohm, *News-Sentinel*, November 8, 2005.