



Ken Marsh after compensation award

Ken Marsh Awarded \$756k For 21 Years Wrongful Imprisonment

By JD Staff

Twenty three years after Ken Marsh was wrongly convicted in San Diego of murdering his girlfriend's two-year-old son, California Governor Arnold Schwarzenegger signed legislation on March 23, 2006, awarding him \$756,900 in compensation for the 21 years he was imprisoned. It was the largest award made under California's compensation statute (Cal Penal Code §§ 4900 to 4906) that awards \$100 per day of wrongful imprisonment to a former prisoner able to prove by a preponderance of the evidence that he or she did nothing to "contribute to the bringing about" of his or her arrest or conviction.

Marsh, now 51, was convicted in November 1983 of murdering young Phillip Buell and sentenced to life in prison. Marsh claimed he had found Phillip injured after he had fallen onto the fireplace hearth from the back of a couch. Although San Diego Police Department detectives concluded Phillip's death was accidental from a fall, murder charges were filed against Marsh based on the determination of doctors at Children's Hospital in San Diego that Phillip's head injuries were caused by abuse. The jury relied on the testimony of those doctors to convict Marsh.

After more than 20 years of support by Phillip's mother, Brenda, and years of pro bono representation by Escondido, CA attorney Tracy Emblem, on August 10, 2004, Marsh's conviction was vacated and he was released from prison after his state habeas corpus petition was granted without opposition from San Diego District Attorney Bonnie Dumanis. Marsh's petition was based on the analysis of numerous medical experts that Phillip's injuries were consistent with those that would be caused by him hitting his head on a brick fireplace hearth after falling off of a couch. Which was what Marsh had said from the time he was first questioned in 1983, and which the San Diego PD had agreed with after their investigation.

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After Marsh's release he filed a claim for restitution under California's wrongful conviction compensation statute. Based on his 7,569 days of imprisonment, his claim totaled \$756,900.

California Attorney General Bill Lockyer opposed Marsh's claim. A hearing to determine if Marsh met the statute's threshold for making a claim began on December 5, 2005. The State was represented by Deputy AG Dutton, and after four days of hearing medical and eyewitness evidence that Phillip's injuries were not caused by Marsh, Dutton conceded that Marsh was "factually innocent," and thus had met his burden of proof under the statute to qualify for compensation.¹

The hearing officer subsequently wrote a 12-page decision finding that Marsh had proved by a preponderance of the evidence that he did not murder Phillip Buell. He recommended that the state Victim Compensation and Government Claims Board award Marsh \$756,900.

On January 19, 2006, the state board voted 3-0 in support of the compensation recommendation. The board's recommendation then went to the state legislature, which was required to authorize the payment from the state's general fund. The legislature approved the payment, and Governor Schwarzenegger signed the bill on March 23, 2006.

Included in the same bill was authorization to pay \$328,000 to Peter Rose for the 9-½ years he was imprisoned after his 1994 wrongful conviction of raping a 13-year-old girl in Lodi, California. Released in 2004, the Victim Compensation and Government Claims Board voted unanimously on October 20, 2005, to award the money to Rose. (For details of Rose's case, see, CA Awards Peter Rose \$328,000 For Ten Years Wrongful Imprisonment, *Justice:Denied*, Issue 30, Fall 2005, p.8.)

Marsh and Rose are both seeking money damages in pending federal civil rights lawsuits that name as defendants, persons and organizations responsible for their respective wrongful conviction and imprisonment.

For more information about Ken Marsh's case see, Toddler's Accidental Death Ends With Babysitter's Murder Conviction — The Ken Marsh Story, *Justice:Denied*, Issue 25, Summer 2004, p. 4. Ken Marsh is "Factually Innocent" Says California's AG, *Justice:Denied*, Issue 30, Fall 2005, p. 15.

Sources:
Governor Signs Bill — \$1M To Wrongly Convicted, AP story, *CBS 5*, San Francisco-Oakland, CA, March 23, 2006.

Endnote:
1 Email from Tracy Emblem to Hans Sherrer, December 10, 2005. Ms. Emblem was one of Ken Marsh's attorneys.

Man Sentenced To 53 Years For Murder Wrongly Pinned On Ray Krone

Ray Krone was convicted in 1992 and sentenced to death for Kim Ancona's 1991 murder in Phoenix, Arizona. He spent three years on Arizona's death row before the Arizona Supreme Court overturned his conviction. Krone was again convicted after a 1996 retrial, and sentenced to life in prison. He was released in April 2002 after DNA testing of blood and saliva found on Ancona's body and clothing conclusively proved he wasn't her assailant. In 2005 Krone settled federal civil rights lawsuits against the City of Phoenix and Maricopa County for a total of \$4.4 million.

The DNA testing that excluded Krone implicated another man, Kenneth Phillips Jr. At the time of Ancona's murder he lived 600 yards from where her body was found, and he was on probation for breaking into a neighboring woman's apartment and choking her while threatening to kill her. Twenty days after Ancona's murder, Phillips was arrested for assaulting a 7-year-old girl. Phillips was imprisoned in Arizona for sexually assaulting and choking the girl at the time of Krone's release.

Maricopa County prosecutors eventually charged Phillips with sexually assaulting Ancona, and sought the death penalty for her first-degree murder. Phillips then entered into a plea agreement. In exchange for his June 29, 2006, guilty pleas to sexual assault and first-degree murder, the prosecution dropped their request for the death penalty.

On August 18, 2006, Phillips was sentenced in Maricopa County Superior Court to a minimum of 25 years in prison for Ancona's murder. He was also sentenced to a consecutive 28-year prison term for her sexual assault. So Phillips, 40, will not be eligible for parole until he is 93 years old. During the sentencing hearing Phillips said, "If I could bring the person back, I would. I would take her place. I'm sorry." He made no comment about sitting by as Krone was sent to death row for the crimes Phillips had committed.

Krone was not present at Phillips' sentencing, but prior to the hearing he said he "did not feel that Phillips should get the death penalty no matter what, simply because the system executes too many innocent people."

Sources:
Phoenix man gets prison in slaying previously pinned on wrong man, by Paul Davenport (AP), *Tucson Citizen*, August 18, 2006. See also, Ray Krone Settles For \$4.4 Million After Two Wrongful Murder Convictions, *Justice:Denied* Issue 32, Spring 2006. Twice Wrongly Convicted of Murder — Ray Krone Is Set Free After 10 Years, *Justice:Denied*, Vol. 2, Issue 9.