

Kenneth (Ken) Richey was twenty-one when in 1986 he was convicted and sentenced to death by an Ohio state court for aggravated felony murder in connection with the death of a friend's two-year-old daughter in a fire.

The prosecution's case was based on their argument that the child's death was caused by an arson fire set by Richey in a jealous rage against his ex-girl friend, who lived in the apartment beneath the one in which the fire started. That apartment was occupied by the young girl and her mother, who was Richey's friend. Richey's lawyer presented no evidence challenging the prosecution's contention the fire was started deliberately.

Richey's conviction and death sentence were affirmed on direct appeal.

Richey, a native of Scotland, was able to garner enough support to retain two fire experts who determined that the prosecution's experts used flawed scientific methods not accepted in the fire-investigation community to determine that arson caused the fire. Ohio denied Richey's state post-conviction appeal based on his trial lawyer's ineffectiveness for failing to challenge the prosecution's arson argument.

Richey then filed a federal habeas corpus petition. Although the U.S. District Court judge agreed that the prosecution's fire experts had been discredited, he denied the petition.

Richey appealed to the federal Sixth Circuit Court of Appeals, which in January 2005 overturned Richey's conviction and sentence on the basis he received constitutionally ineffective assistance of counsel at trial and on appeal.

Ohio filed a writ of certiorari with the U.S. Supreme Court, which accepted review of the case. In October 2005 the Court overturned the Sixth Circuit's decision. Although it reinstated Richey's conviction and death sentence, it remanded the case back to the Sixth Circuit to determine if Ohio had failed "to preserve its objection to the Sixth Circuit's reliance on evidence not presented in state court by failing to raise this argument properly before the Sixth Circuit."

After conducting the analysis ordered by the Supreme Court, the Sixth Circuit decided Ohio did not preserve its objection to Richey presenting evidence for the first time in federal court, and on August 10, 2007 again overturned Richey's conviction and death sentence.

Ohio announced its intention to retry Richey, with the state Attorney General taking over his

Ken Richey Released After 21 Years On Ohio's Death Row

By JD Staff

prosecution. With Richey's retrial scheduled for March 2008, plea negotiations began behind the scenes. Richey flatly rejected pleading to any charge related to arson or that the child was murdered. In mid-December Richey and the prosecutors agreed that in exchange for a no-contest plea to attempted involuntary manslaughter, child endangerment, and breaking and entering, he would be sentenced to time served and released immediately. Richey also agreed not to sue the state for wrongful imprisonment or seek any other damages for his more than 21 years of imprisonment. The deal was a compromise for both parties, Richey insisted he did not agree to babysit his friend's child and he had nothing to do with the fire so he had no responsibility for what happened, while the prosecutors insisted they thought he was guilty of arson and murder.

Richey's brother, Steve, said Richey told him that the deal wasn't ideal, but that he agreed to it because wanted out of prison and was tired from decades on death row fighting for his freedom.

"They tried to kill me, they tried to break me and they nearly won - they nearly had me in that death chamber so many times. But in the end, it's the truth that wins." Ken Richey

A hearing was scheduled for December 20, with Richey planning to fly home to Scotland the next day. However, just hours before the hearing on the morning of the 20th, Richey, who at 43 has a history of heart trouble, was rushed to the hospital with chest pains. Tests discovered that he has a 60% blockage of the arteries to his heart. Not wanting to delay his release any longer, Richey elected to have an operation after he returned home to Scotland. The plea and sentencing hearing was rescheduled for January 7, 2008.

For years Richey's former fiancée Karen Torley, who lives in Scotland, campaigned for his release. The morning of the court hearing she told reporters, "I spoke to Kenny only a few hours ago and he said he wouldn't believe it until it actually happens. I can hardly believe it myself. The past few days have just been so emotional. This is the closing of a long and painful chapter - and the start of a new one."



Ken Richey wearing a Scottish Glengarry cap after his release.

With media from around the world present, the plea hearing on the morning of January 7 took about 30 minutes. After a release process, Richey walked out of the Putnam County Jail, free of shackles for the first time in 7,861 days. Richey had spent more than half his life imprisoned. His first words to the press were, "It's been a long time coming." He also said, "There are innocent people on Ohio's death row - and they need your help."

Ken Parsigian, Richey's *pro bono* lawyer for the past 15 years, told reporters: "This deal represents a complete capitulation by the State. What Kenny said he would never do is plead to murder or arson - and he's not." He continued, "I've been a lawyer for 20 years and I've had huge wins for clients with billions of dollars at stake. But this is the case that means the most, that defines everything I believe in. This case didn't make a penny, but it proved a point - and the point is that we have a system in which everyone is entitled to quality representation and to justice."

Clive Stafford Smith, legal director for Reprieve, a United Kingdom charity that works on behalf of British nationals on death row in countries around the world, said after Richey's release, "There should be no mistake that this deal is nothing short of complete vindication for Kenny. The prosecutors no longer accuse him of murder or having anything to do with starting the fire. Instead, they have charged him with, essentially, failing to babysit."

Since the plea deal bars him from suing for compensation, Richey sold his story of being on death row for two decades to two tabloids and a TV station for about \$100,000.

Previous Justice:Denied articles at the Ken Richey case: "The Crime That Never Was," *Justice:Denied*, Issue 11, March 2000.

"Ken Richey's Conviction and Death Sentence Overturned A Second Time," *Justice:Denied*, Issue 37, Summer 2007.

Sources:

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21 years on - freedom for Kenny Richey, By Jacqui Goddard, *The Scotsman*, January 8, 2008.

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