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ing for April 20. During that hearing the prosecution dropped the charges and Hawkins ordered Buntin's immediate release.

Unlike most exonerations, Buntin was quietly released after 13 years of wrongful imprisonment without any news media present. Several days later, when word leaked out about his release, he told reporters "I'm going to move on and take care of my business. But I feel like somebody has to answer for that. I never should have been in jail – and I spent two more years there after they knew I was innocent." He also said, "It's going to take awhile to re-adjust and reconnect with my family. ... [R]ight now I'm just trying to take life a day at a time and enjoy every moment." His sister, Kim Buntin of Indianapolis, said, "I'm happy he's finally home, but I'm mad he had to go through all of this to prove his innocence."

### Buntin sues attorney and Superior Court

Buntin thought one person needing to answer for what happened to him was his former attorney Rader. In August 2007 he filed a legal malpractice suit against her for the way she handled his case, particularly after Broyles took it under advisement in April 2005.

Then in January 2008 Buntin filed a wrongful detention lawsuit in Marion County Superior Court that named Marion County Superior Court Five as a defendant. The suit also named the court clerk, Marion County, and the State of Indiana as defendants. To avoid a conflict of interest, on February 26, 2008 Indiana Supreme Court Chief Justice Randall Shepard appointed Daniel Pflęging as a special judge to preside over the lawsuit. Indianapolis attorney Michael Sutherland represents Buntin in both lawsuits.

### Judicial Commission files charges against Hawkins and Broyles

Buntin's saga took another twist on April 9, 2008, when the Commission filed a Statement of Charges in the Indiana Supreme Court alleging violations of Indiana's Code of Judicial Conduct by Judge Hawkins and Commissioner Broyles. The 11-count complaint against Hawkins, and the 10-count complaint against Broyles are based on the alleged "delay and dereliction of their duties as the judicial officers responsible for Harold D. Buntin's post-conviction case."

The Commission's complaints detail that the handling of Buntin's case was even more bizarre than was known at the time of his release. The Commission discovered during

its investigation that Buntin's case file was not retrieved from storage, it had never been "archived" to storage, and no court employee could be identified as the person who found the file – or where. It was also learned that the court's file tracking system contains no entries for Buntin's case prior to March 2007 – so its whereabouts before the Commission began its investigation is untraceable. Buntin's letters to Broyles are also missing from the case file, although it is known from other court records that at least five letters were received.

The Commission's investigation also discovered there was no May 20, 2005 order in the file, there were no computer diskette with the order on it in the file as Hawkins claimed, and an examination of Broyles work computer discovered that although it had files on it predating May 2005, there was no evidence that she had prepared Buntin's Order on May 20, 2005, or any day prior to March 8, 2007 – the day it was issued.

When confronted with these facts, Hawkins and Broyles represented to the Commission that they found the diskette with the May 2005 Order in the file, but they realized they had to make corrections to the Order. They claimed to have incorporated those corrections into the Order issued on March 8, 2007, but which they backdated to May 20, 2005. When pressed by the Commission for the computer diskette, they said they didn't know what happened to it after they printed the backdated Order, and they couldn't describe the corrections they made to the "original" Order.

The Commission also discovered that Broyles' post-it note with instructions for processing the order did not indicate the year the note was written – only the day and month are legible. When confronted with the Commission's finding Broyles admitted she might have been off by a year: she could have granted Buntin's petition in May 2006 and not 2005.

Hawkins and Broyles misrepresentations to the Commission resulted in the Statement of Charges also alleging that their lack of truthfulness constituted "conduct prejudicial to the administrations of justice."

Although other cases handled by Hawkins and Broyles may not have all the drama of Buntin's case, they routinely put off ruling on a PCR petition. The Commission's complaints against them allege that they engaged in a pattern of delaying the rulings in many PCR petitions, citing seven other cases between 2004 and 2006 in which six to twenty-eight months elapsed from the time Broyles took the case under advisement to when an order was issued.

## Commissioner Broyles issuance of orders could have far-reaching consequences

One of the charges against Hawkins (Count II) and Broyles (Count III) has potentially far reaching consequences. The Commission alleges it is a violation of Indiana law for Commissioner Broyles – a non-judge – to have engaged in "issuing purportedly final Orders in post-conviction cases without obtaining the approval and signature of the presiding judge." The Commission's charge suggests that any Indiana defendant whose post-conviction Order was not approved *and* signed by the presiding judge could have a legal basis to challenge the legality of not just the Order, but the process underlying issuance of the Order.

### Current Situation

So a quarter-century after he was falsely accused of raping the clerk, Buntin awaits the disposition of his two lawsuits, and the outcome of the Commission's charges against the two people whose inattention kept him prison for two extra years. Buntin is at least the fifth person convicted in Indiana among over 200 nationwide, who have been exonerated by DNA testing since 1989.

#### Sources:

"I never should have been in jail," *Indianapolis Star*, April 24, 2007.

Cleared of rape, Indy man sues over delay in prison release, *Indianapolis Star*, January 16, 2008.

*Harold David Buntin v. Marion County Superior 5, Crim. Div., et al*, Case 49500-0801-SJ-49, Indiana Supreme Court, February 26, 2008.

*In The Matter of The Honorable Grant W. Hawkins Judge Of The Marion Superior Court*, No. 49S00-0804-JD-157, In the Supreme Court of Indiana, April 9, 2008.

*In The Matter of The Honorable Nancy L. Broyles Commissioner Of The Marion Superior Court*, No. 49S00-0804-JD-156, In the Supreme Court of Indiana, April 9, 2008.

## Thomas Arthur's Execution Stayed By "Killer's" Confession

Three days before Thomas Arthur's scheduled July 31, 2008 execution for a 1982 Alabama murder, Bobby Ray Gilbert confessed in an affidavit that he committed the crime as a minor. Imprisoned for life for another murder, Gilbert only began telling people he committed the murder after the U.S. Supreme Court ruled that a person couldn't be executed for a crime committed as a minor. Based on the new evidence of Arthur's actual innocence his lawyers filed motions to stay his execution and for an order to DNA test the evidence to prove Gilbert's presence at the crime scene. The Alabama Supreme Court voted 5 to 4 to grant an indefinite stay, but it did not immediately rule on the motion for DNA testing.

See previous *JD* article: Alabama Has Opposed Testing Evidence In Thomas Arthur's Case For 16 Years, *Justice:Denied*, Issue 37, Summer 2007.