

Leroy McGee Seeks Florida Compensation

By Jon Burstein



Leroy McGee spent three years and seven months in prison for a robbery he didn't commit. His pleas of innocence were ignored by Broward County, Florida jurors, who convicted him. They

went unheeded until one of his many letters to the outside landed on the desk of someone who believed he might be telling the truth.

That someone was the same judge who sent McGee to prison. Broward Circuit Judge Paul Backman eventually overturned McGee's conviction. The victory, though, came a year after McGee finished serving his prison sentence.

McGee, 41, is now seeking compensation from the state for his lost years — time in which he lost his marriage, his job and the chance to watch his children grow up. He is the first person to apply for reparations under the state's Victims of Wrongful Incarceration Compensation Act passed last year. He could be eligible for \$50,000 for every year he spent in prison.

"This was an innocent man who hired the wrong lawyer and ended up paying the price," Judge Backman told the *Sun Sentinel*.

McGee, a soft-spoken carpenter's apprentice for the Broward County School District, said the money isn't as important as what it represents: total vindication. And while the Fort Lauderdale father of five says he has no definite plans for the money, he says it will be used to provide a better life for his children, who range in age from 5 to 22.

"I talk to a lot of people and they say, 'You aren't bitter? I can't see you not being bitter,'" McGee said. "But there's no need for me to be like that. ... I lost everything, but coming back now, I'm getting back double of what I lost."

His legal odyssey began in August 1990 when he walked into a Fort Lauderdale gas station to buy \$3 of gas. The clerk was convinced McGee, then 23, was the gunman who robbed him three weeks earlier of \$463. Police arrested McGee a few weeks later.

McGee, who had no prior record, thought it would be easy to prove his innocence. He had been at work as a custodian at Fort

Lauderdale High School when the July 31, 1990, robbery occurred. His boss could testify to that. He had a time card. His car had been at a garage for maintenance that day.

McGee said his attorney, Theota McClaine, assured him he was going to win. But when it came to the two-day April 1991 trial, the attorney was woefully unprepared, failing to take depositions or know what his defense witnesses would say, according to court records. McClaine failed to raise a single objection during the trial. He didn't tell jurors how the clerk's original description of the gunman as skinny with a mustache didn't match McGee, who is stocky and didn't have facial hair. The attorney tried to enter into evidence a time card for the pay period ending July 25, 1990—five days before the robbery.

"It was absolutely the worst performance in the courtroom I've ever seen," said Backman, who as a judge is limited to ruling on the issues presented to him. He's prevented from entering evidence or arguments on the record himself. He said he made suggestions to McClaine that went unheeded. McClaine, who was disbarred in 1993 for mishandling clients' money, could not be reached for comment.

A jury convicted McGee of robbery. Under mandatory sentencing guidelines, Backman had no choice but to give him a 4 1/2-year prison term. "I went blank after they said I was guilty," McGee said. "Until I got back to that cell, I was blank. I thought, 'How? How could I be innocent and get charged with a crime that I didn't do?'"

Prison changed him—patience was a luxury he didn't have because he didn't want to be seen as soft. Violence surrounded him. One time he was on the phone with his mother when an inmate collapsed near him. He had been stabbed in the chest.

McGee never wavered about his innocence. He wrote letters to anyone he could, from President Bill Clinton to the NAACP. When Backman received a letter, he took it as a legal motion by McGee challenging his attorney's effectiveness. That allowed him to appoint another lawyer, Michael Wrubel, to examine whether he had received adequate representation.

Wrubel argued McGee was in prison because his attorney was ineffective. In August 1995, Backman agreed, throwing out the conviction and ordering a new trial. "In over 1,200 jury trials this court has never witnessed a more tragic set of circumstances," Backman wrote. "While it is unquestioned that the armed robbery took place, it is also clear that the defendant was not the

individual who perpetrated the act."

The Broward State Attorney's Office dropped the robbery charge. And McGee, with the quiet lobbying of the judge, was able to get his job back with the Broward School District.

Thirteen years after his conviction was overturned, McGee said he learned of the Victims of Wrongful Incarceration Compensation Act. Fort Lauderdale attorney David Comras filed paperwork in August asking Broward Circuit Judge Michele Towbin Singer to declare McGee eligible.

In December 2008, Towbin Singer signed an order that McGee had established his innocence by "clear and convincing evidence." The state Attorney General's Office said that McGee's application for compensation is under review.

McGee said it's been hard explaining what's happened to his children. He tries not to focus on the negatives, but on what the future holds. He enjoys taking his 5-year-old daughter Le-Sharria to the park. He's a regular churchgoer. He's ready to finish his carpenter's apprenticeship in December 2009 and become a carpenter for the school district. "I just want the American Dream," he said.

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Bruce Lisker's Murder Conviction Tossed After 26 Years Imprisonment

Seventeen-year-old Bruce Lisker discovered his mother dead in the family's Los Angeles, California home on March 10, 1983. Charged as an adult and convicted of her murder by circumstantial evidence, Lisker was sentenced to 16-years to life in prison. The California Supreme Court denied his post-conviction petition in 1989. Lisker did not file a federal habeas petition.

Lisker filed a second state post-conviction petition in March 2003 based on new evidence of his innocence. After it was denied by the California Supreme Court, Lisker filed his time-barred federal habeas petition under the AEDPA's miscarriage of justice exception. After U.S. Magistrate Ralph Zarefsky's May 2006 Report and Recommendation that Lisker's petition be accepted for review on its merits, it was returned to the California Supreme Court for litigation

Lisker cont. on p. 11