

Fred Martens Sues Australian Government For \$45 Million For Malicious Rape Prosecution

Fred Martens is an Australian pilot who was convicted in 2006 of raping a 14-year-old girl in September 2001 that he allegedly flew from Australia to Papua New Guinea. He was the first person convicted of rape under Australia's 1994 sex-tourism law that targets Australians who commit sex crimes while in Pacific island nations.

Martens was sentenced to 5-1/2 years in prison. After his conviction was affirmed in 2007 he continued insisting he never had any sexual contact with the girl. An investigation by *The Courier-Mail* newspaper in Brisbane, Queensland, Australia, turned up the new evidence of an affidavit by a family member of the girl. The affidavit asserted the girl admitted in November 2003 that she made-up the rape allegation at the urging of Martens' ex-wife. At the time Martens and his ex-wife were engaged in a child custody dispute.

Martens was then able to obtain records from the Papua New Guinean Civil Aviation Au-



Fred Martens with his children Jodi, Emily and Leon

thority that on the day of the alleged assault he was in Papua New Guinea's isolated Western Provinces, more than 1,000 km (more than 600 miles) from Port Moresby where the girl lived. The records proved he could not have raped the girl as she claimed, and that she lied that he flew her from Australia to Papua New Guinea.

Martens filed a new appeal based on the new evidence that he was convicted of a non-existent rape. He garnered national publicity after going on a hunger strike, and in April 2009 the Queensland Attorney General recommended that Martens be granted a new trial. In May 2009 he was released on bail after 940 days of imprisonment.

On November 13, 2009, the Queensland Court of Appeal in Brisbane issued its ruling that "Because it has been demonstrated that (Martens') conviction was unreasonable, and cannot be supported by the evidence, the court should order that the conviction be quashed and the order of imprisonment be set aside." *R v Martens*

[2009] QCA 351 (09-0085).

Martens, 61, has filed a \$45 million dollar lawsuit against the Australian government and six Australian Federal Police (AFP) officers. His lawsuit alleges he was maliciously prosecuted because the AFP knew he was innocent and "conspired to concoct a false case" against him. His lawsuit also claims the AFP "deliberately ignored" inconsistencies in the victim's statements, they ignored or covered-up crucial evidence, did not speak to key witnesses, and falsely claimed the flight records did not exist.

Martens' \$45 million damage claim is supported by the collapse or loss of a number of business ventures owned by Martens as a result of his prosecution and incarceration. Marten also claims he suffered severe emotional, physical and psychological damage as a result of his prosecution and conviction of a non-existent child sex crime. His daughter Stephanie died of malaria in Papua New Guinea while Martens was awaiting trial in Australia. He claims he would have been able to save her life if had he not been stranded in Australia with his funds frozen and his passport confiscated.

Sources:

R v Martens [2009] QCA 351 (09-0085). Aussie pilot sues federal govt for \$45m, *The Sydney Morning Herald*, November 29, 2010.

Man Fighting Conviction Claims Public Smoking Bans Are Based On Nazi Law

Public smoking bans have been enacted in countries around the world. Northern Ireland is one of them.

Chris Carter was convicted of smoking a cigarette in the North Down Borough Council headquarters in 2007. He was ordered to pay a fine and costs of £1,250 (about \$2,000) or serve 47 days in jail.

Carter's appealed his conviction on the basis the smoking ban was illegal, so he couldn't have committed a crime. He cited his extensive research about tobacco from its introduction into Britain by Sir Walter Raleigh in the 16th Century, and research of laws banning smoking — including that the first public smoking ban was instituted in Germany in 1938 by Adolf Hitler.

His also argued the public smoking ban infringed on a smoker's right to freedom



Graphic from the Support Chris Carter Facebook page

from torture.

Carter's conviction was affirmed by Northern Ireland's High Court in June 2010, but he was allowed leave to apply to the Court of Appeals for a judicial review of the smoking ban legislation.

Carter represented himself during the oral arguments in the Court of Appeals on December 2, 2010. Among other things, Carter told the three judge panel:

"He [Hitler] was the first one who introduced a smoking ban in the world. When I got his legislation and put it alongside the European legislation I found that they were one and the same, albeit the words were changed to make it more plausible. I cannot countenance a law being passed by Her Majesty's domain that replicates that of the Third Reich, which is clearly shown in all the documentation I have provided to this court today."

Carter also argued that the smoking ban legis-

lation violated a smoker's right against torture.

If the Court of Appeals denies Carter's effort to challenge the smoking ban legislation, he will be able to appeal their ruling to the U.K.'s Supreme Court.

Source: "Northern Ireland smoking ban 'like Third Reich'," *Belfast Telegraph*, December 3, 2010.

Freeing The Innocent A Handbook for the Wrongfully Convicted

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P. Wilson, Professor of Criminology, Bond University