

## Texas Relies On Technicality To Deny Anthony Graves Compensation For 16 Years Wrongful Imprisonment

The Texas Comptroller's Office has denied Anthony Graves claim for almost \$1.4 million in compensation for the 12 years he spent on death row and the 16 years total he spent imprisoned for six murders in Somerville, Texas he didn't commit.

Graves was convicted in 1994 of murdering 45-year-old Bobbie Joyce Davis, her 16-year-old daughter Nicole, and four grandchildren, ages 4-9 in 1992.

There was no physical or forensic evidence linking Graves to the murders. His conviction and death sentence were based on the testimony of Robert Earl Carter, who was also convicted of the murders. Carter recanted his testimony before his 1998 execution and swore that Graves had nothing to do with the murders.

In 2006 the 5th U.S. Circuit Court of Appeals



Anthony Graves

After a reinvestigation of the case by Special Prosecutor Kelly Siegler, Graves was released on October 27, 2010 after Siegler and Burleson-Washington County District Attorney Bill Parham both agreed he is innocent of any involvement in the murders, and the charges were dismissed.

Graves filed a claim with the comptroller's office under Texas wrongful conviction compensation statute. His attorney was notified on February 11, 2011 that the claim was denied because the judge's order does not state Graves' release was due to his "actual innocence." The comptroller's office explained that the law is very specific that a court's order releasing a claimant must state "on its face" that the release is based "on the claimant's actual innocence." When asked for comment about the controversy caused by the comptroller office's decision, spokesman R.J. Silva said "the law did not allow for special consideration

of the facts in Graves' case."

Siegler commented regarding the denial of compensation to Graves, "Who would have envisioned this kind of situation happening? I'm willing to testify to the fact that we believe he's innocent. I've signed an affidavit. I'm not sure what we are supposed to do to make it happen."

On Thursday, February 17, Texas Governor Rick Perry called Graves' case a "great miscarriage of justice," and said he would assist him through legislation or "directly with the comptroller's office."

Another option may be for Graves to seek a revised order by the judge that specifically states his release was based on his "actual innocence."

Graves was jailed for two years awaiting trial, so he was incarcerated for a total of 18 years. However, he is not eligible for compensation for the two years he was jailed prior to his trial.

Source:

State rejects compensation for wrongly convicted man, *Houston Chronicle*, February 14, 2011. Perry pledges to help Graves, *Brenham Banner-Press*, February 17, 2011.

## Charges Dismissed Against Man Tried Three Times In Vindictive Prosecution

The California Court of Appeal took the rare step of overturning Benjamin Puentes' statutory rape conviction and ordering that the charges be dismissed against him because he was subjected to "vindictive prosecution" by the Santa Clara County District Attorney.

Puentes was a juvenile hall counselor. He was charged with statutory rape of someone more than three years younger (a felony) and contributing to the delinquency of a minor (a misdemeanor) for allegedly drinking beer and then having sex at his home with a 16-year-old girl who had at one time had stayed at the juvenile hall.

Puentes first trial ended in a mistrial because the jury couldn't reach a verdict on either charge. Puentes was retried.

After Puentes second trial a mistrial was declared on the rape charge after the jury couldn't reach a verdict, but the jury con-

victed him of the misdemeanor charge of contributing to the delinquency of a minor.

The Santa Clara County District Attorney's Office made a motion to dismiss the rape charge "in furtherance of justice." The judge granted the motion.

The California Court of Appeal then overturned Puentes' misdemeanor conviction because of the judge's error instructing the jury. During a subsequent hearing the trial judge ruled the prosecution had failed to prove all the elements required to establish Puentes had contributed to the delinquency of a minor and ordered his acquittal.

Puentes thought he was a free man. He was until the DA refiled the rape charge. Puentes filed a pretrial motion to dismiss it on the ground that since it had been dismissed at the request of the DA "in furtherance of justice," it was vindictive prosecution for the DA to refile it in retaliation for Puentes' successful appeal of his misdemeanor conviction. The judge denied Puentes' motion and after his third trial he was convicted by a jury of statutory rape. He was sentenced to three years of felony probation.

Puentes appealed on his conviction. The U.S. Supreme Court ruled in 1974 that "it was not constitutionally permissible for the State to respond to [the defendant's] invocation of his statutory right to appeal by bringing a more serious charge against him prior to the trial de novo." (*Blackledge v. Perry* (1974) 417 U.S. 21, 28-29.) The Court also ruled in 1982 that an individual "certainly may not be punished for exercising a protected statutory or constitutional right." (*U.S. v. Goodwin*, 457 U.S. 368, 372 (1982).

Puentes' primary argument was that "he was subjected to vindictive prosecution" because there was no new evidence to justify refiled the rape charge after it had already been dismissed at the request of the DA. Puentes also argued the DA's refiled of the rape charge was an unconstitutional punishment of him for exercising his right to appeal that resulted in the overturning of his misdemeanor conviction.

After analyzing the course of events in Puentes' case, the Court of Appeal determined that the prosecution had not dispelled its burden to overcome the "presumption of vindictiveness" created by the refiled of the

**Vindictive cont. on page 17**