

Joshua Kezer Awarded \$4 Million For 16 Years Wrongful Imprisonment

By Hans Sherrer

Joshua Kezer was convicted in 1994 of murdering 19-year-old Angela Michelle Lawless in the southeast Missouri town of Benton in November 1992. Seventeen at the time Lawless was found dead in her car, Kezer was sentenced to 60 years in prison.

Although there were signs Lawless struggled with her assailant before she was killed, none of the physical or forensic evidence connected Kezer to Lawless' murder, and there was no eyewitness to the crime. Scott County Sheriff Bill Ferrell admitted during his testimony that there was no evidence Kezer and Lawless knew each other.

Kezer's alibi defense was that on the day of the murder he was 350 miles away in Kankakee, Illinois where he was living. Several alibi witnesses corroborated Kezer's alibi.

Key prosecution evidence was testimony by Mark Abbott, a suspect in the crime who came forward four months after the murder and allegedly claimed he saw Kezer at a convenience store the night of the killing near the crime scene.

The prosecution also relied on three jailhouse informants who testified that Kezer confessed to the murder while awaiting his trial. Prior to Kezer's trial they all recanted to Kezer's lawyer, admitting in signed statements that they lied in the hope of getting a reduced sentence in their own cases. However, shortly before the start of Kezer's trial the prosecutor — future U.S. Congressman Kenny Hulshof — filed a motion to disqualify Kezer's private counsel on the basis a lawyer cannot be both a witness and an advocate on the same case. The motion also alleged that Kezer's lawyer coerced the recantations by threatening the three prisoners. With Kezer's family financially unable to hire a different lawyer, and Kezer having already been jailed for 15 months awaiting trial and not wanting the lengthy continuance that assignment of a public defender would involve, Kezer agreed his lawyer would not testify. So Kezer was unable to take advantage of his lawyer's knowledge that the three jailhouse informants had willingly recanted in writing their claims he confessed.

Post-conviction investigation of Kezer's case resulted in the discovery of new evidence, including that the prosecution had failed to

disclose key documents that Abbott had in fact identified a man named Ray Ring as the driver of the car, and that at least one of the prisoners had recanted in a written statement to prosecutor Hulshof prior to Kezer's trial. Based on the new evidence Kezer filed a writ of habeas corpus based on two claims: Brady violations by the prosecution's failure to disclose exculpatory evidence, and his actual innocence of the crime.

Cole County Circuit Judge Richard Callahan vacated Kezer's conviction in a 44-page ruling he issued on February 17, 2009. Judge Callahanon ruling states in part:

"This Court concludes that the nondisclosure of the above-described exculpatory materials constituted a violation of Josh Kezer's constitutional due process rights within the holding of *Brady v. Maryland*, and, consequently, for this reason alone Josh Kezer's convictions for the murder of Michelle Lawless and the related armed criminal action cannot stand and should be vacated, and Josh Kezer is entitled to habeas corpus relief. (p. 36)

...
In addition to his Brady claim, Petitioner has met the heavier burden under *Amrine* of demonstrating actual innocence by clear and convincing evidence that undermines this Court's confidence in the correctness of the judgment. As such, confidence in his conviction and sentence are so undermined that they cannot stand and must be set aside. *Kezer v. Dormire*, No. 08AC-CC00293 (Cole County, MO Cir Ct, 2-17-2009), p. 44.

Judge Callahanon also wrote:

"There is little about this case which recommends our criminal justice system. The system failed in the investigative and charging stage, it failed at trial, it failed at the post trial review and it failed during the appellate process. ... Tragically for the family of Michelle Lawless, the real killer or killers remain at large." (pp. 1-2)

Kezer was released the next day on bail after spending 15 years and 10 months incarcerated for a murder he had nothing to do with. During an impromptu press conference after his release Kezer told reporters, "There are untold other (innocent) people in prison. They don't have what I had. They don't have million-dollar attorneys. They don't have friends that are relentless."

The murder charge against Kezer was subsequently dismissed.

In August 2009 Kezer filed a federal civil rights lawsuit that named as defendants



Joshua Kezer laughs after his release from the Jefferson City Correctional Center on February 18, 2009 (AP photo)

Scott County, and former Scott County Sheriff Bill Ferrell and deputy sheriff Brenda Schiwitz. The lawsuit sought damages in excess of \$20 million. It claims included the defendant's, "failure to disclose exculpatory evidence, false arrest, wrongful arrest, assault and battery, false imprisonment, procurement and promotion of unreliable and false evidence, ... for which Plaintiff seeks compensation for personal physical injuries and physical sickness, past and future medical bills and expenses, physical pain and suffering, actual damages, pecuniary losses, loss of enjoyment of life, lost ages and income..."

It was reported in the Southeast Missourian on August 14, 2010, that Kezer's lawsuit had been settled. However, there was no official announcement about a settlement or its terms. Consequently, Justice Denied filed a Public Records Request with Scott County for a copy of the settlement agreement. Scott County complied with that request and provided a copy of the Settlement Agreement. The following is key information in the agreement:

- The settlement was entered on August 7, 2010.
- Kezer settled all his claims against the defendants for a total of \$4 million.
- All of Kezer's attorney fees, costs and expenses are to be paid from the \$4 million
- All of Kezer's compensation is for his "personal physical injuries and physical sickness within the meaning of §104(a)(2) of the Internal Revenue Code."
- None of Kezer's compensation is "payment for lost wages and income, punitive damages and other nonphysical injuries and damages."
- Since none of Kezer's compensation is considered personal income under the IRC, the Defendant's agreed "not to issue and file IRS Form 1099" for the payments to Kezer.

Due to the way the settlement is structured, Kezer will not have to pay federal income tax on the \$4 million in compensation, less whatever portion of that he agreed to pay his lawyers.

The unsung hero in Kezer's case is Jane Williams. Ms. Williams worked in Columbia, Missouri as a social worker and she

Kezer cont. on page 8

Louis Mickens-Thomas Released After More Than Four Decades Of Imprisonment

Centurion Ministries is the oldest organization in the United States dedicated to helping secure the exoneration of innocent persons. They have had great success in doing so. In the 31 years since Centurion's founder and director Jim McCloskey first began working on the case of an innocent person, they have assisted in the exoneration of more than 40 men and women. But since Centurion takes "tough" cases that typically require years of work to obtain new evidence, they sometimes don't succeed in helping a person to be outright exonerated. In that situation the best they can hope for is a person's sentence commutation or some form of supervised release.

Louis Mickens-Thomas is one of those cases. Thomas was tried in 1967 for the rape and murder of 12-year-old Edith Connor three years earlier in West Philadelphia. Thomas became a suspect because he lived about 50' from the apartment where the girl's family lived and his shoe repair shop was nearby. The only evidence tying Thomas to the crime was the testimony of crime lab technician Agnes Mallatratt that microscopic particles brushed from the girl's clothes were "similar in all physical characteristics" to materials in Thomas' row house and shoe shop.

The particles found on the girl's clothes included microscopic fibers and paint chips. Even though those particles were common to the area where her body was found, the jury convicted Thomas who was then 38-years-old, and he was sentenced to life in prison without parole.

After Thomas' conviction it was discovered that Mallatratt was a junior high school



Louis Mickens-Thomas

dropout with no formal training who had repeatedly committed perjury in trials by inventing academic and scientific credentials. Thomas' conviction was overturned since it was based on Mallatratt's testimony.

In 1969 during Thomas' second trial, the crime lab's director testified that he directly supervised all of Mallatratt's work. However, a glaring inconsistency is that during Thomas first trial Mallatratt testified she worked alone and the director didn't testify,

Thomas was reconvicted and again sentenced to life in prison without parole.

Centurion Ministries began investigating Thomas' case in 1990. Based on evidence of Thomas' innocence uncovered by Centurion's investigation, in 1995 outgoing Governor Robert P. Casey didn't pardon Thomas, but he did commute his sentence to life with parole. Thomas effort to be granted parole turned into a years long battle with Pennsylvania's parole board that was spearheaded by Centurion. That effort culminated in January 2004 when in unanimously granting Thomas' writ of habeas corpus the 3rd Circuit U.S. Court of Appeals cited the State's willful non-compliance, bad faith, and vindictiveness in denying Thomas parole. (*Louis Mickens-Thomas v. Vaughn*, 355 F.3d 294 (3rd Cir., 1-14-2004)).

Thomas' parole was revoked because he kissed a woman at his church.

Thomas was subsequently paroled, but it was revoked 18 months later when he reported to his parole officer that he kissed a woman at his church without her consent. He was sentenced to 9 months in prison for his violation,

but when that time was up the parole board refused to release him. Centurion began a new effort for Thomas' release. That culminated in the granting of Thomas' writ of habeas corpus by the 3rd Circuit U.S. Court of Appeals on January 20, 2011. The Court ordered the "Superintendent of the Pennsylvania State Correctional Institute at Graterford, and the Board to release Thomas on parole forthwith." (*Louis Mickens-Thomas v Vaughn*, No. 09-3744 (3rd Cir. 1-20-2011))

In ordering Thomas' release the Court explained that the parole board justified denying Thomas' parole "because he has demonstrated an "escalating pattern of high risk behavior." This claim relies on a single incident in which Thomas kissed a woman at church against her will. This incident does not credibly constitute an "escalating pattern of high risk behavior.""

Centurion found a nephew and his wife willing to let the 82-year-old Thomas live with them in Pennsylvania's Pocono mountains, and he was released on Tuesday, January 25.

Thomas spent almost 45 years in prison for a crime there is no evidence he committed except for the testimony of a crime lab technician who not only lied repeatedly in court that she had formal education and specialized training that she did not have, but who stated on the record that her job was "to fit the suspect to the crime." That is exactly what she did in Thomas' case.

Although Centurion's 21 years of working on Louis Mickens-Thomas' case hasn't yet resulted in his exoneration, it has resulted in him able to live his final years outside a prison's walls.

Sources:

Louis Mickens-Thomas v. Vaughn, 355 F.3d 294 (3rd Cir., 1-14-2004)

"Philly man wins release from prison after more than four decades," *Philadelphia Inquirer*, January 21, 2011.



Kezer cont. from page 9

founded the local chapter of Love INC, an organization that connects with people recently released from prison into the community. Williams met Kezer in the chapel at the Jefferson City Correctional Center and took an interest in his case after he exhausted his appeals. She obtained his case files and found what she believed were significant problems with the prosecution's case and the evidence the jury relied on to convict Kezer.

Williams wrote a 20-page overview of Kezer's case and sent it to an attorney she knew in Boston. After looking it over he



Jane Williams and Joshua Kezer after his release

contacted St Louis attorney Charlie Weiss. After reviewing Williams' overview and looking into the case Weiss agreed to represent Kezer pro

bono. After Weiss became involved Scott County Sheriff Rick Walter, who as a reserve deputy was the person who found Lawless' body in her car, voluntarily reopened the investigation into her murder. With access to the prosecution's internal case files, Walter's investigation uncovered the key documents prosecutor Hulshof con-

cealed from Kezer's attorney. Although the efforts of Weiss and Walter's were invaluable to Kezer's release, he would have completed his 60 year sentence without Jane Williams' investigation and efforts to bring attention to his case. Weiss said of Williams, "She instigated this whole thing. Without her, we would never be involved."

Sources:

Kezer receives settlement, not apology, Southeast Missourian, August 14, 2011.

Mo. man convicted of '92 slaying freed, MSNBC.com, February 18, 2009.

