

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." overturned Graves' conviction and death sentence based on the prosecutor's misconduct of withholding exculpatory evidence and eliciting false testimony.

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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

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Conviction

Review of the movie
by Hans Sherrer

Conviction is a 2010 movie about Kenneth Waters' conviction for the 1980 murder of Katharina Brow in Ayer, Massachusetts, and Betty Anne Waters' belief in her brother's innocence that resulted in him being freed in 2001 after witnesses recanted and DNA tests proved he didn't commit the crime. *Conviction* has a number of bona fide stars, including two-time Academy Award winner Hilary Swank as Betty Anne Waters, Sam Rockwell as Kenneth Waters, and Minnie Driver, Juliette Lewis, and Peter Gallagher in supporting roles.

Conviction is Swank's third movie biopic of a woman. In 2007 she starred as teacher Erin Gruwell in *Freedom Writers*, and in 2009 she starred in *Amelia* as famed aviatrix Amelia Earhart. Swank strives for authenticity in her movies and this reviewer loved her in *Amelia*. So expectations were high for *Conviction*.

On the level of going through the motions to tell Kenneth and Betty Anne Waters story *Conviction* somewhat succeeds – but a PBS Frontline documentary would have done it more effectively.

On the level of being an entertaining movie with vivid performances *Conviction* fails miserably. Kenneth and Betty Anne are not likeable people. Kenneth is a violent thug who might have been saved from actually killing someone by being imprisoned 18 years for a murder he didn't commit. Betty

Anne isn't much better. She is a pushy and self-centered. Swank's portrayal of Betty Anne doesn't help humanize her, and you never get the sense that Swank is doing anything except posing throughout the movie. See Swank pout! See Swank get mad! See Swank look serious! See Swank talk with a fake Massachusetts accent! See Swank frown! And so on. The other actors likewise seem to be posing. They are all better actors than their performances in *Conviction*. There simply isn't a coherent vision or direction for the movie.

Even the choice of making a movie about Kenneth Waters' case seems a bit odd. Betty Anne Waters accepted her brother's word he wasn't guilty. It turns out that he was innocent, but if he had been proven guilty her years of effort would have been for naught. After all, psychopaths are so skilled at lying they can fool trained psychologists ... much less gullible relatives. It is foolish for anyone to invest years and years in working on behalf of a person convicted of a crime without a rational basis to think he or she didn't commit the crime. Yet *Conviction* attempts to idolize Betty Anne Waters precisely because she just felt in her heart that her brother wasn't guilty.

For reasons unknown the filmmakers chose not to include two important aspects of Kenneth's story, not even in scrolled text at the end of the movie. One is he died about six months after his release from prison as a result of injuries due to an accidental fall. The second is that Betty Anne is the administer of Kenneth's estate that in 2009 was awarded \$10.7 million by a federal judge as a result of a federal civil rights lawsuit against the City of Ayers and other defendants.

Conviction was a box office disappointment. It only grossed \$6.8 million in the U.S. while its production cost was \$12.5 million plus advertising and distribution expenses. *Conviction* was not nominated in any category for a Golden Globe or Academy Award.



Fortunately, there are a number of well-made movies about people working to free a wrongly convicted person. One of those is *The Wronged Man*, a 2010 Lifetime Movie Network production that stars Julia Ormond as paralegal Janet Gregory and Mahershala Ali as Calvin Willis. Gregory worked on Willis' case for about 20 years before DNA evidence proved his innocence of raping a 10-year-old girl in 1981. Gregory didn't know Willis before she began working on his case and became convinced of his innocence. She even raised the money to pay for the DNA testing that freed Willis. Ormond is compelling in her portrayal of Gregory and her decades long quest during which she kept forging ahead in spite of experiencing many disappointments. *The Wronged Man* has the feel of authenticity and character development that is lacking in *Conviction*. So if a person wants to see a recent movie about a woman working to free an innocent man, this reviewer suggests that *The Wronged Man* will be a much more satisfying experience than *Conviction*.

If a person wants to see a classic movie about a woman working to free an innocent man, you can't go wrong with *Call Northside 777*. That 1948 movie is a dramatization of the 12-year effort by Joseph Majczek's mother to find proof her son didn't murder a Chicago policeman in 1933. *Call Northside 777* stars Jimmy Stewart, Lee J. Cobb and Richard Conte.

Conviction, *The Wronged Man*, and *Call Northside 777* are available for purchase from Amazon.com and other retailers, and they can be rented from Netflix and other rental outlets.

Conviction
Directed by Tony Goldwyn
Screenplay by Pamela Gray
107 minutes
Released to theaters in October 2010
Released on DVD/Blu-ray in March 2011

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rape charge, because "the prosecutor believed that justice had been served by the misdemeanor conviction only until defendant prevailed on appeal. ... the only inference from this fact is that the prosecutor changed her mind because defendant prevailed on appeal." Consequently, the trial judge had erred in determining that the facts and the law did not support a finding of "prosecutor vindictiveness" and dismissal of the rape charge. (*People v. Benjamin Puentes*, No H034546 (6th Appellate Dist Ct, 12-20-2010))

The Court ordered the reversal of Puentes' conviction and that the trial court dismiss the rape charge.

Sources:
People v. Benjamin Puentes, No H034546 (6th Appellate Dist Ct, 12-20-2010)

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