

Court OK's Compensation Lawsuit By Terry Irving For 4-1/2 Years Wrongful Imprisonment For Bank Robbery

Terry Irving has been given the green light by the Supreme Court in Brisbane, Queensland, Australia to proceed with his lawsuit seeking compensation for 4-1/2 years of wrongful incarceration for the armed robbery of a bank in 1993 that was committed by another person.

Irving's ordeal began in March 1993 when he loaned his car to an acquaintance he met at pub he frequented in Cairns, the gateway to the Great Barrier Reef on Australia's northeastern coast. Irving's car was later identified as the getaway vehicle used by a lone person who committed the armed robbery of AUS\$6,230 from a bank in Cairns.

When questioned by police Irving explained he had nothing to do with the robbery that occurred while the acquaintance had his car. Irving did not match the description of the robber provided by witnesses who described him as a young man in his early 20s with dark hair and more than 5'-11" (180cm) tall, while Irving was 37 with brown hair and 5'-7" (172cm) tall.

However, in May 1993 Irving was arrested and charged with the robbery based on his identification by three bank tellers, even though he didn't fit their descriptions of the robber in their police statements. He was denied bail based on an arrest when he was 19.

Twelve days before Irving's December 1993 trial his lawyer went on vacation, and then his barrister failed to show up for the trial. (A barrister is a lawyer who specializes in court proceedings.) Irving's trial that was scheduled to last for three days was completed in less than a day. Based on the teller's in-court identification of Irving the jury convicted him of the robbery and he was sentenced to seven years and five months in prison.

Australia [does not mandate](#) legal representation for a direct appeal and Irving's application for legal aid was denied. Irving's *pro se* appeal to the Queensland Court of Appeal was dismissed in April 1994. He was then denied legal aid to prepare his application for leave to appeal to the High Court of Australia. Irving made six more applications between July 1994 and August 1995 for



Terry Irving
(Cameron Laird --
The Courier-Mail)

legal aid to file a special leave to appeal his conviction to the High Court. All were denied. In August 1995 Irving was dealt another blow when he was sued for compensation by the three bank tellers who testified against him at his trial. In September 1995 he appeared in court representing himself and claimed that he had been misidentified and was innocent of robbing the bank. In November 1995 he was ordered to compensate the tellers.

Irving was able to obtain through Freedom of Information requests exculpatory evidence that hadn't been disclosed to him or introduced by the prosecution during his trial. That evidence included a bank security camera photograph of the robber who bore no resemblance to Irving. Also, Irving discovered that two employees at the neighboring post office saw the robber standing outside the bank undisguised and gave statements to police that Irving wasn't the robber.

With no hope of being appointed a lawyer, Irving prepared a *pro se* application for special leave to appeal his conviction to the High Court. (A *writ of certiorari* is the equivalent of a special leave to appeal.) In May 1996 the High Court accepted his documentation as a special leave to appeal. The State conceded in their response to Irving's application that his trial had been unfair. On December 8, 1997 -- four years to the day after his conviction -- the High Court took the extraordinary action of granting Irving special leave to appeal, allowed his appeal, quashed his conviction and ordered a retrial. [The Court stated](#) it had "the gravest misgivings about the circumstances of this case", that "it is a very disturbing situation" and that "in all of this, the accused has been denied legal aid for his appeal." Three days later Irving was released from prison on bail after being incarcerated for 4-1/2 years from the time of his arrest. In October 1998 the Director of Public Prosecutions of Queensland notified Irving that he would not be re-tried, and in January 1999 the charge was dismissed.

Irving applied in July 1998 to the Queensland Attorney General for *ex gratia* compensation based on his conviction being a miscarriage of justice. He also requested the establishment of an independent Commission of Inquiry to investigate the circumstances of his wrongful conviction and imprisonment.

In March 1999 Irving filed a lawsuit against

the investigating officer and the State of Queensland, seeking damages for malicious prosecution and exemplary damages.

Since Queensland's Attorney General had not responded to his previous application, in July 1999 Irving filed another application for compensation.

In August 1999 the Criminal Justice Commission declined to establish a Commission of Inquiry based on their determination there wasn't a reasonable suspicion of official misconduct in Irving's prosecution.

Ultimately Irving's lawsuit was dismissed and Queensland's Attorney-General Kerry Shine announced a review of the case. After Cameron Dick succeeded Shine as attorney-general he announced in December 2009 [that Irving would](#) not be granted *ex gratia* compensation because he didn't consider his case a miscarriage of justice. Dick said that Irving would have to file a lawsuit if he wanted to pursue compensation.

Irving filed a lawsuit against the State of Queensland, and the government sought its dismissal. In late August 2011 the Supreme Court in Brisbane [ruled Irving's lawsuit](#) can proceed to trial.

After the Court announced its ruling, the now 56-year-old [Irving said](#): "The checks and balances did not protect me. This has affected my family, my friends. The thing that drives me is that I don't want this to happen to my children, my grandchildren, anyone."

Irving's lawsuit is expected to go to trial sometime in 2012, and depending on its outcome it may be the final chapter to his odyssey that began when he loaned his car to the wrong person two decades ago.

Note:

Some background details of Irving's case are from a report by the Office Of The United Nations High Commissioner For Human Rights, [Terry Irving v. Australia](#): Communication No. 880/1999, U.N. Doc. CCPR/C/74/D/880/1999 (2002), April 1, 2002.

Sources:

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[Wrongly accused](#) robber told to sue for compo, *Townsville Bulletin*, December 22, 2009
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