

Newman Chiadzwa Sues For Return Of 19 Pounds Of Diamonds After Conviction For Illegal Possession Overturned

Newman Chiadzwa is suing for the return of diamonds worth many tens of millions of dollars that were confiscated when he was convicted of illegally possessing the diamonds. His conviction was overturned by Zimbabwe's High Court on June 29, 2011.

Chiadzwa was a 53-year-old businessman in Mutare, Zimbabwe when in July 2009 he and his family had to go into hiding to avoid arrest by state security agents for helping a Kimberley Process certification team [uncover evidence](#) of gross human rights abuses in Zimbabwe's diamond-rich area. There were reports that in 2008 government troops tortured to death and shot more than 200 miners believed to be illegally mining diamonds. The miners were reported to have been buried in mass graves in areas controlled by the military so human rights monitors wouldn't have access to them.

The government seized from Chiadzwa's business 43,208 carats of diamonds, and in August 2009 he was charged with illegally possessing the gems. The diamonds weighed 8.61 kilograms, or almost 19 pounds. They had a retail value estimated at between \$100 and \$300 million, although their value to a wholesaler like Chiadzwa is less.

Chiadzwa was convicted on February 26, 2010 of illegally possessing the diamonds in violation of the Precious Stones Trade Act. He was sentenced to five years in prison and fined US\$132,764. He was immedi-

Burrowes cont. from page 12

Burrowes, now 26, lives in Milwaukee and his daughter Christiana, who was three when she saw him being arrested in 2006, is now eight. After his conviction was overturned in 2009 [he told reporters](#), "It matters a lot for her to know that she's got a good daddy, and I'm going to be there for her and I'm not the type of guy that they tried to play me out to be."

Sources:

[Christopher Burrowes](#) - Ruling #6, State of Wisconsin Claims Board, October 11, 2011

[Judge Throws Out Sexual Assault Conviction](#), WISN-TV (Milwaukee, WI), December 17, 2009



Newman Chiadzwa

ately taken into custody and began serving his sentence.

Chiadzwa's conviction and sentence were quashed by Zimbabwe's High Court on June 29, 2011 and he was immediately released after 16 months of imprisonment. The Attorney-General's Office did not oppose Chiadzwa's appeal that was based on his argument that he lawfully owned the diamonds so no crime was committed.

After his release Chiadzwa sought return of his confiscated diamonds from the court clerk. He discovered the clerk did not have the diamonds because they were not formally entered as exhibits, even though the prosecution presented them in court as evidence. Chiadzwa's lawyer was informed the diamonds were turned over to the Ministry of Mines after Chiadzwa's trial. An official with the Ministry [wrote in a letter](#) to Chiadzwa's attorney:

"Effectively the 8.61 kg of precious stones that you requested were never handed over to the clerk of court for exhibits but instead upon completion of the matter by the presiding officer were released into the custody of the mines officials 1 year and 4 months ago."

However, the letter didn't state the diamonds would be returned to Chiadzwa, but

suggested at some future time he might be able to make a claim to them. In response Chiadzwa filed a lawsuit in the High Court in late September 2011 seeking an order for the release of the diamonds, or if they had been disposed of for the government to pay him a proper and correct valuation of the gems. Chiadzwa [wrote in an](#) Affidavit accompanying his lawsuit:

"I am extremely concerned that despite my official communications the respondents have ignored me and I feel that my diamonds may have been unlawfully disposed or will be unlawfully disposed of to my prejudice."

Chiadzwa's lawsuit is pending. In May 2012 Chiadzwa filed a lawsuit for return of equipment seized from his homestead in 2009. That lawsuit is also pending.

Sources:

[Chief Chiadzwa, family flee security agents](#), *The Standard*, August 2, 2009

[Zimbabwe government prosecutes Diamond Chief](#), *ZimEye.org*, August 13, 2009

[Newman Chiadzwa Jailed Five Years](#), *The Herald* (Zimbabwe), March 4, 2010

[Newman Chiadzwa set free](#), *The Herald* (Zimbabwe), July 8, 2011

[Chiadzwa Wants His 8.6KG Diamonds Back](#), *The Herald* (Zimbabwe), September 28, 2011

[Chiadzwa's 8kg of Diamonds Disappears Mysteriously](#), *Radio VOP* (Zimbabwe), September 27, 2011

[Zimbabwean man sues court over lost 300-million-dollar diamonds](#), *The Zimbabwe Telegraph*, October 10, 2011

[Zimbabwe: Newman Chiadzwa Demands Seized Equipment](#), *The Herald* (Zimbabwe), May 16, 2012

Relief Granted In 36% Of Appeals In New South Wales Are Granted

The New South Wales Judicial Commission has released a report analyzing all criminal appeals considered by New South Wales' Court of Criminal Appeal (CCA) for the seven years from 2001 through 2007. The CCA is the highest court in New South Wales, Australia's most populous state.

"Conviction appeals in New South Wales" is a 344-page [report that has a](#) wealth of information of interest to people in not only Australia, but the U.S and other countries.

The single most stunning statistic is the CCA granted relief to the defendant in almost 36% of the cases it reviewed. That is almost beyond belief for people

in the U.S. where state and federal appeals courts have rates in the low single digits of granting relief to defendants.

The rate of successful appeals was high across the board for a variety of convicted crimes: 30% of homicide convictions were set aside, 43% of sexual assault convictions were set aside, 36% of robbery and extortion convictions were set aside, and 32% of drug convictions were set aside.

In 35% of the cases the CCA ordered an acquittal based on insufficient evidence of the defendant's guilt which barred a retrial, and in 62% of the cases a retrial was ordered.

The results of the cases ordered for retrial are analyzed in the report. The retrials were ordered based on legal errors at trial that made the conviction unsafe, not a lack of evidence. Consequently

Appeals cont. on page 14



"Conviction appeals in New South Wales" by the NSW Judicial Commission

Christina Maycock Reimbursed \$20,733 Restitution After Fraud Conviction Overturned

Christina Carole Maycock was convicted in Gillette, Wyoming on May 27, 2010 of one count of obtaining property by false pretenses. Her conviction was overturned by the Wyoming Supreme Court on July 6, 2011, and an order was issued on October 21, 2011 that she be repaid the restitution she paid.

In 1985 Maycock went to work full-time for the Campbell County Cemetery District (District). Her employer had a group insurance policy. Beginning in December 1992 the District changed to an insurance company whose policy limited coverage to the District's employees, their spouses, and their dependent children. Maycock had divorced her husband Bill Maycock in 1971, but they continued to live as a family with their children in a home jointly owned by the couple. In her December 1992 enrollment application Maycock noted she was married and listed Bill Maycock as her spouse. He was added to the District's group plan and the District paid the full cost of his insurance coverage. In September 1999 the couple remarried.

Maycock retired in 2008 and was elected to



Christina Carole Maycock in September 2009. (Gillette News-Record)

the Cemetery District's Board of Directors. In August 2009 the Gillette Police Department received a tip that Bill Maycock had been falsely listed as Maycock's spouse on her 1992 insurance enrollment form. An investigation confirmed the Maycocks' weren't married in December 1992. [She was charged](#) on September 22, 2009 with one count of obtaining property by false pretenses for having the District pay her domestic partners insurance premiums from December 1992 to September 1999.

During Maycock's two day jury trial the prosecution entered evidence she wasn't married from December 1992 to September 1999 when the District paid Bill Maycock's insurance premiums. Maycock's defense was she filed out the insurance application the same as she had on previous application forms when the District used several different insurance companies, and so she had no intent to illegally obtain any benefits from her employer because she lived with Bill Maycock and her children as a family. The jury convicted Maycock on May 27, 2010, and she was given a suspended 2 to 5 years prison sentence, 5 years of supervised release, and ordered her to pay restitution in the amount of the insurance premiums the District paid for Bill Maycock.

Maycock appealed, and on July 6, 2011 the Wyoming Supreme Court overturned her conviction on the basis of insufficient evidence in [Christina Carole Maycock v. State of Wyoming](#), 2011 WY 104, July 6, 2011.

In their ruling the Court noted that an essential element of the crime was the prosecution had to prove the District relied on Maycock's alleged false pretense to part with its property, i.e., pay Bill Maycock's insurance premiums for almost seven years when he was Maycock's domestic partner. It was undisputed that Maycock listed him as her spouse when he legally wasn't, so the issue was if the District relied on that to pay Bill Maycock's insurance premiums. The only testimony about that was from three people who were Board members at times from 1992 to 1999. Defense testimony by the three witnesses established that:

- (1) the Board intended to finance insurance for the District's employees and their families;
- (2) the Board broadly defined "family" to include anyone living in the same household as the employee;
- (3) the Maycocks' marital status was of no consequence to the Board because Bill Maycock fit within the Board's broad definition of family for purposes of the District's insurance coverage; and,
- (4) the Board would have insured Bill Maycock even if it had known the Maycocks were not legally married.

Appeals cont. from page 13

it could be expected that many retrials would result in a conviction. Yet, the defendant was convicted of the original charge in only 36% of the cases remanded for a retrial. In 12% of those cases the defendant pled guilty and in 24% the defendant was convicted after a retrial. In 20% of the cases the defendant was convicted of a lesser charge. So only 56% of the defendants remanded for a retrial were convicted. The low conviction rate on retrial, and particularly the low rate of reconviction of the original charge, suggests that in almost 2/3rds of the cases remanded there was a dearth of evidence against the defendant and that may have been the reason the prejudicial error was committed at trial that resulted in the CCA granting a retrial. In other words, there may be a direct relationship between a general lack of evidence for what a defendant was charged with and the prejudicial errors being committed that result in the granting of a retrial.

One reason for the CCA's high rate of

granting appeals is it has [a broad mandate](#) for evaluation of a criminal appeal:

"The court on any appeal under section 5(1) against conviction shall allow the appeal if it is of opinion that the verdict of the jury should be set aside on the ground that it is unreasonable, or cannot be supported, having regard to the evidence, or that the judgment of the court of trial should be set aside on the ground of the wrong decision of any question of law, or that on any other ground whatsoever there was a miscarriage of justice."

The full study can be read online or downloaded [by clicking here](#). The Executive Summary of the report can be downloaded [by clicking here](#).

Sources:

[Conviction Appeals in New South Wales](#), Research Monograph 35, June 2011, NSW Judicial Commission

[Conviction Appeals in New South Wales](#), Research Monograph 35, June 2011, Executive Summary, NSW Judicial Commission

[Crooks are guilty, after all](#), *News.com.au*, October 18, 2011

The prosecution didn't offer any rebuttal testimony that the Board relied on Maycock's representation of Bill Maycock as her spouse or that the Board would not have paid the insurance premiums if it had known he wasn't her husband. Consequently, [the Court ruled](#), "We hold there is insufficient evidence to sustain Maycock's conviction for the crime of obtaining property by false pretenses."

The Court's ruling barred Maycock's retrial on double jeopardy grounds.

Maycock sued for return of the \$20,733 restitution she paid. On October 21, 2011 a Campbell County judge ordered [repayment of the money](#) to Maycock.

Sources:

[Christina Carole Maycock v. Wyoming](#), 2011 WY 104, July 6, 2011

[Campbell County Attorney Charges](#) Cemetery Board Members, September 23, 2009

[Money to be repaid to former Wyoming cemetery trustee](#) whose fraud conviction was overturned, *The Republic* (Columbus, IN), October 23, 2011