

Barry Beach's Murder Conviction Reinstated By The Montana Supreme Court

The Montana Supreme Court reinstated the 1984 murder conviction of Barry Beach on May 14, 2013. By a 4 to 3 vote, the Montana Supreme Court ruled that District Court Judge E. Wayne Phillips abused his discretion when in November 2011 he vacated Beach's conviction as a miscarriage of justice based on new evidence supporting his actual innocence. Beach, who had been freed on his own recognizance by Judge Phillips in December 2011, was taken into custody the day after the court's ruling.

In January 1983 Beach was living with his father in Louisiana when he was arrested on a misdemeanor charge of contributing to the delinquency of a minor. Detectives in the area were trying to solve the abduction and murder of three young women. The detectives learned that Beach was from Poplar, Montana where the 1979 murder of 17-year-old Kimberly Nees was unsolved. After being interrogated for several days without a lawyer Beach confessed to the three Louisiana murders and Nees' murder. After his interrogation Beach recanted his confessions as forced by the detectives threatening



Barry Beach during hearing on August 1, 2011 in Lewistown, MT (KTVO-TV Billings, MT)

conclusively proving his confessions were false, and other men were charged with those crimes. However, Beach was charged with Nees' murder and extradited to Montana.

During Beach's 1984 trial the prosecution didn't introduce any physical, forensic or eyewitness evidence linking him to Kimberly Nees' murder, and there was crime scene evidence that excluded him, including a bloody palm print found on the pick-up Nees was driving that didn't match either her or Beach. To convict Beach of deliberate murder the jury relied on the prosecution's key evidence of his recanted confession to Nees' murder, which had a number of inconsistencies with the crime scene and details of Nees' murder. Beach was sentenced to 100 years in prison.

Beach's convictions were affirmed on direct appeal, and his state and federal habeas petitions were denied.

In 2008 lawyers working with [Centurion Ministries](#) filed a Petition for Postconviction Relief that requested a new trial based on new evidence of Beach's actual innocence. Key new evidence was by 11 witnesses who didn't testify at his trial. Several of those witnesses had evidence identifying that Nees' killers were four women. One of Beach's new witnesses told a police officer around the time of Nees' murder that he saw a number of girls in the truck Nees' was driving that night headed to the park where her body was found. Beach's trial lawyer was not told about that witnesses statement.

An evidentiary hearing [ordered in 2009](#) by the Montana's Supreme Court began on August 1, 2011 in Lewistown, Montana. During that hearing all of Beach's witnesses with new evidence testified. Beach filed his post-conviction petition after the 5-year statute of limitations had expired, so a key issue for Judge Phillips to decide was if the time limit could be waived based on Beach's new evidence establishing his actual innocence.

him with the electric chair if he didn't confess. Beach's interrogation wasn't video or audio-taped and the detectives denied they threatened him.

Before Beach could be charged with the three Louisiana murders evidence was discovered

On November 23, 2011 District Court Judge E. Wayne Phillips filed [his written ruling](#). Judge Phillips found that the evidence by Beach's witnesses hadn't been heard by the jury at trial, that due diligence had been exercised in discovering it, that all 11 of Beach's new witnesses were credible, and his new evidence was sufficient to establish by clear and convincing evidence that no reasonable juror would find Beach guilty beyond a reasonable doubt if they heard their testimony. Judge Phillips ruling explained in detail why he found the witnesses credible and why their new evidence supported a new trial for Beach.

Judge Phillips took into consideration Beach's disputed confession [in ruling](#) "the totality of the evidence is clear and convincing enough to rule that Mr. Beach has certainly opened the actual innocence gateway sufficiently enough to walk through the miscarriage of justice exception toward a new trial. ... It is hereby Ordered that Beach's Petition for Post Conviction Relief is not time barred, the Petition is Granted, and Mr. Beach is Granted a new trial on the charge of the murder of Kim Nees." (29-30)

Two weeks later Judge Phillips ordered Beach's conditional release on his own recognizance.

The Montana Attorney General's Office appealed Judge Phillips ruling granting Beach a new trial and his release. Jim McCloskey, founder and director of Centurion Ministries that began investigating Beach's case in 2000, [described the efforts](#) of the AG's Office to keep Beach in prison and to reinstate his conviction as a "sin against humanity."

On May 14, 2013 the Montana Supreme Court issued [its ruling](#) that addressed a single issue: "Did the District Court err by concluding that Beach was entitled to a new trial because he had demonstrated his actual innocence?" In *Montana v. Barry Allan Beach*, 2013 MT 130 (MT Sup Ct, 5-14-2013) the court ruled by a majority 4 to 3 vote the District Court had erred and reinstated Beach's conviction. The Court's 53-page opinion concluded:

"The District Court made the mistake, deliberately, of listening to the new evidence, and failing to closely consider the old evidence. Thus, no matter how compelling the District Court found the new evidence to be, it committed error as a matter of law by refusing to consider that evidence together with the evi-

Coleman cont. from p. 6

A website with information about William Coleman's case is, www.billcolemaninnocentmanwrongfullyconvicted.webs.com

[Click here to read](#) "William Coleman Starves Claiming Innocence of Raping Wife" published in *Justice Denied* Issue 42.

[Click here to read](#) William Coleman's "Statement of Protest" that he read during his testimony on February 10, 2009.

Source:

[Commissioner Of Correction v. William B. Coleman](#), No. SC18721 (CT Sup Ct, 3-13-2013) (Affirming lower court's permanent injunction allowing DOC force feeding.)

[Coleman v. Semple](#), No. 3-11cv512 (JBA) (USDC CT), 6-28-12 (Order granting Respondent's motion to dismiss habeas petition without prejudice.)

[Lantz v. Coleman](#), 978 A. 2d 164 (CT. Super. Ct. 2009) (Permanent injunction allowing DOC force feeding.)

[State v. William Coleman](#), 103 Conn.App. 508, 930 A.2d 753, cert. denied, 284 Conn. 928, 934 A.2d 244 (2007) (Affirming conviction)

[Hunger-Striking Inmate Refuses To Register As Sex Offender](#), *CtNewsJunkie.com*, April 25, 2013

"[William Coleman Starves Claiming Innocence of Raping Wife](#)" published in *Justice Denied*, Issue 42

Bill Coleman's "[Statement of Protest](#)", *Justice Denied*, Issue 42



Beach cont. from p. 7

dence presented during the 1984 trial to determine whether its impression of the testimony could be sustained in light of the record as a whole. After a review of all the evidence, we conclude that Beach did not provide reliable evidence of his actual innocence that displaced the trial evidence and thus his conviction. (§179)

Applying the proper standard of review to the new evidence offered by Beach, we determine he has failed to sustain his burden of demonstrating either a free-standing claim or a gateway claim of “actual innocence.” The District Court’s order is reversed. Beach’s petition for postconviction relief is denied and dismissed.”

The three dissenters took strong exception to what it considered the majority’s erroneous assessment of the District Court’s ruling:

“The District Court found the testimony of each of Beach’s witnesses to be credible and believable. The District Court observed the demeanor of each witness presented by Beach. The District Court carefully detailed what it found credible about each witness. The District Court considered the fact that most witnesses had no connection to the town of Poplar, Beach, or Nees, and accordingly, had no motive to lie. The District Court, as the trier of fact, sits in a better position to observe the witnesses and determine credibility than this Court. The District Court has presided over at least 35 criminal trials and has experience gauging the credibility of witnesses. I cannot say from this vantage point that the District Court’s determination regarding the witnesses’ credibility and believability rises to the level of clearly erroneous. (§142)

The District Court next weighed the evidence that the State presented at Beach’s original trial against Beach’s new evidence to determine whether Beach had demonstrated that no reasonable juror would find Beach guilty beyond a reasonable doubt. ... The District Court stated, “[i]t is [Beach’s] confession that constitutes the entirety of the State’s argument. That confession was considered by this court in its Order.” (§143)

Beach’s confession constituted “the focal point of this whole inquiry.” The State conceded at Beach’s trial that no reliable physical evidence retrieved from the crime scene tied Beach to the murder. The District Court’s statement that it had compared the evidence at the hearing against



Kimberly Nees

Beach’s confession indicates that the District Court properly weighed the State’s evidence from Beach’s 1984 trial against the new evidence presented at the hearing. (§144)

The [district] court’s weighing of the evidence led it to conclude that no need existed for Beach to have a new post-conviction relief hearing based on the fact that Beach had demonstrated his free standing actual innocence claim by meeting the higher burden of persuasion. (§145)

This ruling marks what likely will be the final chapter in the saga of Barry Beach. We oversee a criminal justice system that seeks to resolve a defendant’s guilt through processes created and administered by humans. Humans, by nature, are fallible and the processes that humans create share this same fallibility. ... The District Court scrupulously attempted to comply with its mandate from this Court to consider Beach’s alleged new evidence. I cannot say that the District Court’s rulings rise to the level of abuse of discretion, and, accordingly would affirm the order of the District Court. (§146)

After the Montana Supreme Court issued its ruling McCloskey released a statement on behalf of Centurion Ministries in which he said: “This decision came as a complete and utter shock to all concerned. We are absolutely stunned and disgusted by this turn of events. No one saw this coming.”

[Click here to read](#) the Montana Supreme Court’s majority ruling in *Montana v. Barry Allan Beach*, 2013 MT 130 (MT Sup Ct, 5-14-2013).

Having exhausted his options to overturn his conviction in state court, on September 13, 2013 Barry Beach filed a 413-page application for commutation of his sentence with the Montana Board of Pardons and Parole. [Click here to read](#) the application.

Previous *Justice Denied* articles about Beach’s case are: “[Barry Beach Granted New Trial](#) In 1984 Murder Conviction,” and “[Barry Beach Released On Bail](#) After 29 Years Imprisonment.”

Barry Beach’s website with extensive information about his case is, <http://montanansforjustice.com>.

Barry Beach can be written at:
Barry Beach #21520
Montana State Prison
700 Conley Lake Drive
Deer Lodge, MT 59722

Sources:

[Barry Allan Beach v State of Montana](#), 220 P.3d 667, 2009 MT 398, 353 Mont. 411 (MT Sup Ct, 11-24-2009)

[Barry Allan Beach v. State of Montana](#), No. 1068-C, MT 15th Judicial Dist Roosevelt County, November 23, 2011 (granting Barry Beach a new trial)

[State of Montana v. Barry Allan Beach](#), 2013 MT 130 (MT Sup Ct, 5-14-2013)

[Barry Beach](#), Montana DOC inmate lookup webpage,



Innocents Database Now Lists 4,002 Cases

The [Innocents Database](#) linked to from Justice Denied’s website is the world largest database of wrongly convicted people. It now lists 4,002 cases. All the cases are supported by sources for research. Those sources include court decisions, newspaper and magazine articles, and books.

The [Innocents Database](#) includes:

- 577 innocent people sentenced to death.
- 780 innocent people sentenced to life in prison.
- 1,597 innocent people convicted of murder who were imprisoned an average of 9-2/3 years before their exoneration.
- 565 innocent people convicted of rape or sexual assault who were imprisoned an average of 10 years before their exoneration.
- 530 innocent people exonerated after a false confession by him or herself or a co-defendant.
- 258 innocent people convicted of a crime that never occurred.
- 165 innocent people posthumously exonerated by a court or a pardon.
- 62 innocent people convicted of a crime when they were in another city, state or country from where the crime occurred.
- 1,166 innocent people had 1 or more co-defendants.
- 12% of wrongly convicted persons are women.
- The average for all exonerated persons is 7-1/2 years imprisonment before their exoneration.
- 31 is the average age of a person when wrongly convicted.
- Innocent people convicted in 105 countries are in the database.

[Click here to go to the Innocents Database at, www.forejustice.org/search_idb.htm.](#)

