

## 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-

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A website with information about William Coleman's case is, [www.billcolemaninnocentmanwrongfullyconvicted.webs.com](http://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

