

Cooper cont. from p. 3

formed Cooper in a letter that his pardon request couldn't be processed until he exhausted his judicial remedies to overturn his conviction. [Ahearn stated](#), "...we need to be certain the judicial process is complete and has been given every opportunity to address any error that may have occurred."

On October 3, 2016 Cooper's lawyers filed a petition in the Elkhart County Superior Court requesting that his conviction be vacated and a new trial granted. If Cooper's petition is granted, it would then be up to the DA's office to either pursue a retrial, or request the dismissal of his charges. If Cooper's petition is unsuccessful, then Gov. Pence, or his predecessor, would then consider his pardon.

If Cooper is successful in getting his conviction overturned, he would be able to file a federal civil rights lawsuit seeking compensation just as Parish did.

Parish filed a federal civil rights lawsuit on September 24, 2007 against the City of Elkhart and three former Elkhart PD officers. Parish's [lawsuit alleged](#): "Almost immediately after the Kershner shooting, defendants Rezutko, Abrose, Cutler, and the other law enforcement defendants determined to falsely implicate Parish and to build a false case against him, with the aim of securing his false arrest and then his false imprisonment." After more than seven years of litigation, in November 2014 Parish and the City of Elkhart settled his suit for \$4.9 million.

The saga continues that began twenty years ago this month when Cooper and Parish were charged with crimes fabricated with the help of the Elkhart police -- who didn't even bother to learn that at that time Cooper and Parish were complete strangers who had never even met.

Sources:

[Phantom Robbery And Fake Crime Scene Leads To 30-Year Prison Sentence](#) — The Christopher Parish Story, By Christopher Parish, Justice Denied Issue 30 (Jan. 2006), 7, 37-39

[Parish's Conviction Vacated - New Trial Ordered!!](#), By Hans Sherrer, Justice Denied, Issue 30 (Jan. 2006), 7

[Charges Dismissed Against Christopher Parish](#), By Hans Sherrer, Justice Denied Issue 34 (Feb. 2007), 19

[Parish v. State](#), 838 NE 2d 495 (Ind. Court of Appeals 2005) (Reversing conviction based on ineffective assistance of counsel.)

[Wrongfully convicted Keith Cooper asks for new trial](#), By Madeline Buckley, www.indystar.com, October 4, 2016

[Christopher Parish, et al v. City of Elkhart, IN, et al](#), No. 09-2056 (7th Cir. 7-30-2010)

[Parish et al v. Elkhart City of et al](#), No. 3:2007cv00452 (USDC Ind. N) (Complaint under 42 USC 1983)

Stealing Food Out Of Necessity Not A Crime, Rules Italy's Supreme Court

On May 2, 2016 Italy's Supreme Court [issued its landmark ruling](#) that stealing a small amount of food out of necessity is not a crime.

In 2011 Roman Ostriakov was a 31-year-old homeless Ukrainian immigrant living in Genoa, Italy. Ostriakov went into a supermarket and he only had enough money to buy some breadsticks, that he paid for. However, a shopper alerted store personnel to seeing Ostriakov place food items in his pocket. Ostriakov was detained when he attempted to leave the market. Police were called, and a search of his pockets discovered two pieces of cheese and a package of sausages he had not paid for. Ostriakov was arrested and charged with theft of the cheese and sausage worth \$5.50 (€4.07).¹

Ostriakov was convicted of the theft of the cheese and sausage. He was sentenced to six months in jail and ordered to pay a €100 fine (US\$114) — which he couldn't afford to pay. Ostriakov appealed, but his conviction and sentence were affirmed in two rounds of appellate review, the last on February 12, 2015 by the Court of Appeal of Genoa.

The Attorney General of the Court of Appeal of Genoa appealed to Italy's highest court — the Supreme Court of Cassation in Rome. The Attorney General argued that Ostriakov's theft conviction and sentence should be set-aside, because his arrest before he left the supermarket prevented him from completing the theft. Therefore, Ostriakov's theft conviction should be replaced with a conviction for the lesser crime of attempted theft and his sentence reduced accordingly.

On May 2, 2015 Italy's Supreme Court set-aside Ostriakov's theft conviction, but rejected the prosecution's argument he committed a lesser crime, and acquitted him. The Supreme Court made the landmark ruling that stealing a small amount of food necessary to overcome a person's immediate need for food "does not constitute a crime" under Italian law. The [Court ruled](#):

"The condition of the defendant and the circumstances in which the seizure of merchandise took place prove that he took possession of that small amount of food in the face of an immediate and essential need for nourishment, acting



Italy's Supreme Court of Cassation in Rome (wikimapia.org)

therefore in a state of necessity. People should not be punished if, forced by need, they steal small quantities of food in order to meet the basic requirement of feeding themselves." (Supreme Court of Cassation, Judgment 18248, fifth criminal section, May 2, 2016)

The Supreme Court's ruling was favorably commented on by the press in Italy, with some of them comparing Ostriakov's situation to that of Jean Valjean in Victor Hugo's novel *Les Misérables*. Valjean served 19 years in prison after stealing a loaf of bread to feed his sister's starving children.

La Stampa published an editorial on its front-page [that stated](#), "The court's decision reminds us all that in a civilised country no one should be allowed to die of hunger."

Massimo Gramellini [wrote in an op-ed](#) titled "The Right To Be Hungry" published in *La Stampa*, "For chief judges the right to survival prevails over the property. [That attitude in] America would be blasphemy..."

An article in *Corriere Della Sera* [opined that](#) statistics support that 615 people are added to the ranks of Italy's poor every day, and it was "unthinkable that the law should not take note of reality."

It is unimaginable that Italy's *Ostriakov* ruling could be duplicated in the United States. A previously convicted defendant's sentence could be expected to be enhanced for the crime of stealing \$5.50 in merchandise -- not acquitted of committing a non-crime.

Endnote 1. In late 2011 the exchange rate was about \$1.35 per euro (€).

Sources:

[Stealing food if you are poor and hungry is not a crime](#), Italy's highest court rules, *The Telegraph* (London, UK), May 3, 2016

[Italian court rules food theft 'not a crime' if hungry](#), BBC News, May 3, 2016

[Il diritto di avere fame](#) (The Right To Be Hungry), *La Stampa*, May 3, 2016 (Translated into English with Google Translate)