

Kirstin Lobato's Habeas Case Sent Back To District Court By Nevada Supreme Court

On November 23, 2016 the Nevada Supreme Court [ruled that](#) Kirstin Lobato's habeas corpus case will be returned to the district court for an evidentiary hearing and consideration of her actual innocence claim.

Ms. Lobato was convicted in October 2006 of charges related to the death of homeless Duran Bailey in a Las Vegas bank's trash enclosure on July 8, 2001. She was sentenced to serve 13 to 35 years in prison.

The Nevada Supreme Court affirmed Ms. Lobato's convictions in October 2009, and in May 2010 she filed a habeas corpus petition that included 79 grounds for overturning her convictions.

In August 2011 Ms. Lobato's petition was summarily denied by Clark County District Court Judge Valorie Vega, and she filed an appeal in the Nevada Supreme Court.

The NSC heard oral arguments in Ms. Lobato's habeas corpus case on September 9, 2014.

After more than two years of deliberations the NSC issued its ruling on November 23. The Court overturned Vega's ruling on 27 of Ms. Lobato's 79 habeas grounds. However, the Court did not reverse her conviction. Instead her case was remanded to the district court for further consideration of two issues in her petition.



Kirstin Lobato after her release on bail in Dec. 2005 while awaiting her retrial.

The NSC ruled Judge Vega erred in summarily denying Ms. Lobato's two grounds that assert her trial lawyer provided ineffective assistance of counsel for failing to investigate forensic entomology and forensic pathology evidence that establish Bailey died at a time the prosecution has conceded Ms. Lobato was in Panaca, 165 miles from Las Vegas.

Strickland v. Washington, 466 U.S. 668 (1984) established a two-prong test to determine ineffective assistance of counsel: that there is a reasonable probability a petitioner was *prejudiced* by their counsel's *deficient* conduct. The NSC ruled MS. Lobato satisfied the first prong because she was prejudiced by her trial counsel's conduct because there is a reasonable probability she would have been acquitted if her jury had known the new forensic evidence. However, the Court ordered an evidentiary hearing to determine if her counsel's failure to investigate the new evidence was deficient conduct by falling "below an objective standard of reasonableness."

The NSC also ruled Judge Vega erred in summarily denying Ms. Lobato's 25 grounds that assert new evidence supports her actual innocence. Although the NSC's ruling in three cases over the past 50 years supports that a claim of actual innocence can be made in a post-conviction habeas petition, the Court has never specifically ruled that it can. The NSC's Nov. 23 ruling states that it wants the district court to decide if an actual innocence claim can be

made under Nevada's post-conviction statute. That issue was somewhat argued in the briefs by Ms. Lobato and the State filed in the NSC, so it is not known why the Court chose to pass off the responsibility to make that important decision to the lower court.

The NSC summarily denied Ms. Lobato's two grounds based on the failure of the Clark County District Attorney's Office to disclose evidence favorable to her innocence. The NSC refused to consider 50 of her grounds that asserted ineffective assistance of her trial lawyers. Eight of those grounds detail her trial lawyers ineffectiveness for failing to object to the commission of at least 293 deliberate acts of gross misconduct by ADAs William Kephart and Sandra DiGiacomo throughout Ms. Lobato's trial. The NSC's ruling rewards the State of Nevada by letting Kephart and DiGiacomo get away scot free for repeatedly stepping on the scales of justice to ensure the outcome of Ms. Lobato's trial would be her conviction.

Ms. Lobato and the State each have the option to file a motion for the NSC to reconsider its ruling.

Justice Denied began investigating Ms. Lobato's case in 2003. Justice Denied's post-conviction investigation of Ms. Lobato's case resulted in the discovery of the new evidence of her actual innocence that the NSC's ruling directs the district court to review for its admissibility in her habeas petition.

Judge Vega retired in January 2015, so Ms. Lobato's case is now reassigned to Clark County District Court Judge Stefany Miley.



President Obama Doesn't Know He Can Pardon Edward Snowden and Hillary Clinton?

President Barack Obama was asked during an interview on November 17, 2016 if he was going to pardon Edward Snowden. [Obama responded](#): "I can't pardon somebody who hasn't gone before a court and presented themselves, so that's not something that I would comment on at this point."

On June 14, 2013 Snowden [was charged](#) with three federal charges: one count of theft, and two counts of violating the Espionage Act for "unauthorized communication of national defense information"; and,

"willful communication of classified communications intelligence information to an unauthorized person."

The charges were related to Snowden's copying and leaking classified information from the National Security Agency in 2013 without prior authorization. The public disclosure of that information revealed global surveillance programs run by the NSA and other countries, including the Five Eyes Intelligence Alliance operated with the cooperation of telecommunication companies and European governments.

In May 2013 Snowden flew from Hawaii, where he was working, to Hong Kong with the information he had taken. He was in Hong Kong when the first news stories about the NSA surveillance programs were

published, and he was there when the charges against him were unsealed on June 21, 2013. Two days later he flew to Moscow, Russia, with the intention of flying to Ecuador that had granted him asylum. After Snowden arrived in Russia the U.S. revoked his passport. That prevented him from flying to Ecuador, because his connecting flight to Cuba had to fly over U.S. friendly countries and territory.

Unable to leave Russia, Snowden was initially granted temporary asylum, and he remains in Russia under a residency permit.

Wikileaks has admitted it paid for Snowden's hotel stay in Hong Kong and his flight to Russia.

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