

Cozen O'Connor Pro Bono Team Secure James Dennis's Release After 25 years in Prison

Friday, January 20, 2017

Twenty-five years ago, James Dennis was convicted of murder and sentenced to death. Since that conviction, he and his counsel have filed numerous appeals and applications for post-conviction relief. He has never stopped maintaining his innocence but has remained incarcerated. Now, a strategy devised by Stephen Cozen and Matt Glazer, with assists from Harper Seldin and Coleen Williams, has led to a deal that will likely have Dennis out in a few weeks.

In 2013, Judge Brody wrote in her opinion granting Dennis's habeas petition that "James Dennis was wrongfully convicted and sentenced to die for a crime he did not commit." Police did not recover a weapon or ammunition, the car eyewitnesses described, the jewelry taken from the victim, or the at least one, and likely two, accomplices involved. The prosecution's case was based on "shaky eyewitness identifications from three witnesses and testimony from one man who said he saw Dennis with a gun the night of the murder."

In violation of Dennis's constitutional right to due process, the government withheld and suppressed information that would have helped Dennis's defense: information about significant flaws in eyewitness interviews and identification, leads and tips that might have led to the actual perpetrators, and evidence that would have changed or impeached witness statements in Dennis's favor, including that the witness who said he saw the gun had a motive to lie.

Among the most egregious violations is that the prosecution did not turn over to the defense information that would have strongly supported Dennis's alibi. Dennis testified that he waved to an acquaintance, Latanya Cason, on a bus at almost exactly the 1:54 pm time of the murder. At trial, however, Cason "guessed" that she had left work after 2, and then picked up her public assistance check and ran errands, putting the time she ran into Dennis that day around 4.

On appeal, Cason submitted an affidavit explaining that she had constructed her timeline based on a receipt for her check the police had shown her but had not given the defense or even the district attorney. The receipt showed that she had picked up her welfare check at 13:03 military time, that is, 1:03 pm. Because she did not understand military time, she incorrectly believed that she had picked up her check at 3:03 pm. On appeal, she corrected her testimony to say, consistent with Dennis's alibi, that she saw him "between 2 and 2:30 pm."

On August 23, 2016, the Third Circuit issued a detailed 231-page opinion that reviewed the evidence and arguments, affirmed Judge Brody's opinion, and gave the government 90 days after the mandate issued to start a new trial or release Dennis. Ultimately, the court denied the DA's request to stay the issuance of the mandate and ordered the retrial, if there was to be one, to begin by December 29.

Arnold and Porter had been representing Dennis for more than 15 years when they received the Third Circuit's order. They needed to add lawyers to the team who knew the legal and political landscape in Pennsylvania, and had the experience and gravitas to convince the district attorney to finally release James Dennis — or, failing that, to retry the case. Cozen emerged as their choice. Cozen immediately agreed to take the case, and he and Glazer began their review of the many opinions in Dennis's case, as well as the trial transcript and exhibits.

Cozen and Glazer constructed a memo to explain their recommended strategy to the team, and that strategy was quickly and unanimously accepted. On December 2, with time running out for both sides to prepare for trial, Cozen spoke for an hour and a half to top officials in the DA's office. Using

Related Practice Areas

- Subrogation & Recovery

information and arguments from the judicial opinions, as well as those which he and Matt had developed, he told them that they should release Dennis without a retrial because he was legally — and factually — innocent, and that if they retried him they would lose based on that, and also based on the impressive lineup of counsel that had pledged to represent Dennis on retrial.

Cozen and the DA's office had several conversations after that presentation. Among the issues was a robbery conviction for which Dennis was sentenced after his murder conviction. His sentence for the robbery was 6.5 to 30 years, to run alongside the sentence for murder. So, even if Dennis were granted release for the vacated murder sentence, he could still have five years to serve on the robbery charge. The DA offered a *nolo* plea but would not support parole and release for the robbery. Dennis did not want to take his chances with a parole board, and the DA would not budge.

The team needed to take another step, with a new strategy. Cozen says, "The strategy was to see how far we could push the DA's office. The only way to do that was to put them in a box. The way to do that was to do something unique, something unheard of."

On December 20, Cozen proposed to the DA's office that they agree to his motion for modification of the sentence in the robbery case to correct a defect in that sentence. The defect? Dennis's robbery sentence was so long because of an aggravating factor: the murder conviction, the one that had by then been called into doubt by the federal courts. Although the DA's office was very professional and good to deal with, it refused, saying that it did not want a ruling that would establish a precedent that might invite additional, similar, motions.

Cozen and Glazer had the papers ready. They filed an emergency motion for resentencing on December 21. The court set a hearing for the next day. With that, the DA called in the morning, just hours before the hearing, to offer a deal to end Dennis's incarceration.

The deal the team negotiated included the DA's recommendation that Dennis be immediately paroled and be permitted to enter a *nolo contendere*, rather than guilty, plea to the murder charges. The *nolo* plea was a crucial factor to Dennis, because it allowed him to accept a plea deal while still maintaining his innocence, including on the court record. The judge who accepted his plea was so moved by Dennis's testimony that she invited him to return to speak to judges and lawyers about his experience fighting for his innocence and freedom for 25 years.

James Dennis served twenty-five years in jail because the government violated his constitutional right to a proper defense. Soon, he will be freed because of Arnold and Porter's relentless efforts, and Stephen Cozen and Matt Glazer's skill, hard work, and creative strategies.