

Innocence claim not enough in non-death penalty case

By: Scott Lauck scott.lauck@molawyersmedia.com October 11, 2016

An appeals court on Tuesday said it could not review a man's claim that he is innocent of a 1982 murder because Missouri law doesn't recognize a "freestanding claim of actual innocence" unless the death penalty is involved.

The Court of Appeals Western District denied a habeas petition from Rodney Lincoln, who is serving two life sentences in prison. The Missouri Supreme Court has only recognized such claims in death penalty cases, the Western District said, and whether those principles should be extended to non-death penalty cases "remains an open and unanswered question."



Missouri Court of Appeals Western District, located in Kansas City. Photo by Scott Lauck.

"In short, no matter how compelling [Lincoln]'s argument may be, we are constrained to afford habeas relief only as authorized," Judge Cynthia Martin wrote for the court. Judges Gary Witt and Rex Gabbert concurred.

In an interview, Sean O'Brien, a law professor at the University of Missouri-Kansas City who helped represent Lincoln, said they were still weighing their options but that they could seek transfer to the Supreme Court.

"I can't imagine a judicial system where innocence is not a ground for relief from a conviction," he said. "We're still trying to wrap our heads around that."

The case stems from the April 27, 1982, murder of Joanne Tate in her St. Louis apartment. Tate's daughters, then ages 7 and 4, suffered multiple stab wounds but survived. The 7-year-old initially identified someone named "Bill" as the assailant and offered some identifying information. She later identified Lincoln as the attacker and testified against him at trial.

But she has since recanted that testimony, saying she was traumatized and pressured into making the identification. She now believes the attacker to be serial killer Tommy Lynn Sells, who once lived in St. Louis and who was executed in Texas in 2014.

Lincoln had also been implicated because of a pubic hair found at the crime scene that an expert witness initially linked to him. Later DNA testing found the hair was not his, though that was not enough to overturn his conviction, the Eastern District held in 2014, because it didn't necessarily prove he was innocent of the crime. The daughter's testimony, the court held, had been "the key to the convictions."

Lincoln's current argument hinged on a 2003 case, *State ex rel. Amrine v. Roper*, in which the Missouri Supreme Court ordered a new trial for death row inmate Joseph Amrine after witnesses recanted their testimony implicating him in a prison murder. The Western District pointed to language in the *Amrine* ruling indicating that its holding was limited to defendants who had been sentenced to death. Amrine was subsequently released after prosecutors declined to retry him.

The 2003 opinion said the death penalty is "fundamentally different from other cases in which innocence is asserted after a fair trial" and pointed to a state statute that requires the Supreme Court to review the "strength of the evidence" when weighing death penalty cases.

Lincoln also argued that his claims of innocence were a "gateway" to reopen otherwise procedurally barred allegations that his original trial was fundamentally unfair. Among other things, he argued that he'd had ineffective assistance of counsel and that the state had failed to turn over records that might have helped his case. The Western District, however, said that "following an exhaustive review of the habeas record, we conclude that [Lincoln]

would be unable to sustain his burden to establish” those claims, essentially ruling that Lincoln’s original trial was fair enough.

O’Brien said the court should have given more credence to the evidence that the original trial was flawed. He also said court rules make it clear that the Western District could have acted, as “the court never has to allow a fundamental miscarriage of justice to stand – until today, apparently.”

O’Brien, who was involved in the 2003 *Amrine* case, also worked with Tricia Bushnell of the Midwest Innocence Project on the case.

Nanci Gonder, a spokeswoman for the Missouri Attorney General’s Office, declined to comment on the ruling.

The case is *In Re: Lincoln v. Cassidy*, WD79854.

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