

**IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

RODNEY L. LINCOLN,)	
)	
Rodney,)	
)	
v.)	No. WD79854
)	
JAY CASSADAY, Superintendent,)	
Jefferson City Correctional Facility,)	
)	
Respondent.)	

MOTION FOR EXPEDITED SCHEDULE

Petitioner, Rodney L. Lincoln, by counsel, moves this Court to order an expedited schedule for the resolution of Mr. Lincoln’s Petition for Writ of Habeas Corpus filed pursuant to Mo. Rule 91, Section 532.430 RSMO, Article I, Section 12 of the Missouri Constitution. In support of this motion, Mr. Lincoln states:

1. In spite of his persistent protests of innocence from the very beginning, Mr. Lincoln has been in custody since May, 1982, based upon a wrongful arrest and conviction for the manslaughter of Joanne Tate and the first degree assault of Ms. Tate’s four-year-old and seven-year-old daughters. Mr. Lincoln is unquestionably entitled to relief from his conviction under *State ex rel. Amrine v. Roper*, 102 S.W.3d 541, 548 (Mo. 2003), because no evidence whatsoever remains to connect Mr. Lincoln to the crime for which he is incarcerated.

2. In prior proceedings in Mr. Lincoln’s case, Mr. Lincoln and attorneys for the State of Missouri agreed that only two pieces of evidence introduced at Mr. Lincoln’s trial linked Mr. Lincoln to the crime: the identification testimony of then-eight-year-old M.D. (full name withheld to protect her privacy) and discredited forensic testimony, proven false by DNA testing, that a hair recovered from a blanket at the scene of the crime “matched” Mr. Lincoln. *Lincoln v. State*, 457 S.W.3d 800, 801 (Mo. App. ED 2014). “DNA testing showed that [the hair] did not belong to [Mr. Lincoln],” and “the parties agreed that the various police reports gave no results that could place Movant at the scene of the crime.” *Lincoln v. State*, 457 S.W.3d at 804. A second foreign pubic hair, found on the perineum of M.D.’s sister, R.T., though not used at trial, was also tested and determined not to have originated from Mr. Lincoln or any of the victims. *Id.* Even though DNA testing excluded Mr. Lincoln as the source of the foreign hairs at the crime scene, Mr. Lincoln’s motion for release was denied because M.D.’s testimony was the “lynchpin’ of [Mr. Lincoln’s] conviction.” *Id.*

3. After the denial of Mr. Lincoln’s motion for release based on the DNA testing, M.D. viewed a news program that included photographic images of an alternative suspect and spontaneously recanted her identification of Mr. Lincoln. On November 30, 2015, M.D. spoke with Assistant Circuit Attorney Ed Postawko and informed him that “Rodney Lincoln did not kill my mother, and he was

innocent.” Ex. 1 at 4. M.D. has come to this realization on her own; no threats or promises have been made in exchange for her efforts to free Mr. Lincoln. *Id.* at 1.

4. Mr. Lincoln filed a petition for writ of habeas corpus in the Cole County Circuit Court on December 14, 2015, No. 15AC-cc-0588. The St. Louis City Prosecuting Attorney, which had represented the State of Missouri at trial and in DNA proceedings, met with M.D. and reviewed the case, and indicated that she would not oppose Mr. Lincoln’s immediate release, and was working with Mr. Lincoln’s counsel to arrange Mr. Lincoln’s release. However, the Attorney General subsequently injected himself into the case and, after nearly a week of silence in response to inquiries by Mr. Lincoln’s counsel, notified counsel by telephone on December 22, 2015, that he would oppose Mr. Lincoln’s Petition for Writ of Habeas Corpus. Attorney General Christ Koster has contested every assertion of innocence by a Missouri prisoner, without exception, and without regard to the strength of the evidence.

5. This Court is familiar with the handiwork of the detectives who manufactured the case against Rodney Lincoln; they include some of the same detectives who framed George Allen, who was freed by this Court just before Christmas in 2012. *See State ex rel. Koster v. Green*, 388 S.W.3d 603 (Mo. App. 2012), discussing false police reports and *Brady* violations by Detective Joe Burgoon and others who took 32 years of George Allen’s life. The same detectives

were using the same questionable methods during the same time frame to take 34 years of Rodney Lincoln's life.

6. Mr. Lincoln's Petition for Writ of Habeas Corpus is supported by specific facts proving that St. Louis City detectives falsely convicted him by pressuring a traumatized seven-year-old girl to identify a photo of Rodney Lincoln, and bolstering the obviously suggestive identification by manipulating microscopic hair comparison beyond the limits of valid forensic science. Mr. Lincoln proved his allegations at an evidentiary hearing.

7. There is no evidence that can be produced to link Mr. Lincoln to the crime which even the victim, and only eyewitness, now believes he did not commit. Further delay in this matter would only prolong the unjust and unconstitutional incarceration of an innocent man for no proper or ethical government purpose.

8. Mr. Lincoln's advanced age and failing health compounds the manifest injustice that the State is perpetuating by his continued incarceration. *See* Hearing Transcript (H.T.) 3/18/16 at 102-104. He is seventy-one years old, and suffers from COPD. The ends of justice would be defeated by delaying his inevitable entitlement to freedom until he is deceased or too frail to enjoy any quality of life.

9. Mr. Lincoln's continued incarceration also frustrates the wishes and emotional well-being of M.D., the only surviving victim of this offense, who urged

the State in a face-to-face meeting to “do the f*cking right thing,” and testified in the circuit court in this matter that “He should have been released yesterday.” H.T. 3/18/16 at 42. Surviving members of M.D.’s own family “have always had [] doubts” about Rodney Lincoln’s guilt for very good reasons. Ex. 37, Affidavit of Abigail Wallace, M.D.’s maternal aunt, at 1. M.D.’s maternal uncle, Nathaniel Clenney, stated, “My doubts of Rodney's guilt began at the scene when I found JoAnn's body and M. told me that 'Bill' had done this to her mother.” Ex. 36 at 2. M.D.’s cousin and best friend since childhood, Jacqueline Barton, testified that the M.D.’s acknowledgment of Mr. Lincoln’s innocence has “made us stronger, it has brought us closer.” H.T. 3/18/16 at 58. However, when asked about M.D.’s emotional state since her retraction of her identification of Mr. Lincoln, Ms. Barton replied:

I would love to be able to tell you that colors are blooming everywhere and flowers are popping up and it's our time to smile but there actually haven't been because she's been carrying freaking guilt about locking a man away for over 30 years who hasn't even seen his grandchildren yet, who's never met them. She has to carry that and she won't let it go because she can't give him back those 30 years.

H.T. 3/18/16 at 59. It is rare that the person convicted of this crime and the victim and surviving family of a homicide victim come before this Court asking for the same thing.

10. Counsel for Mr. Lincoln suggest that under the rare circumstances of this case, this Court should issue a schedule that will result in the most just and

efficient resolution of this matter possible, cognizant of the fact that every day that passes with Mr. Lincoln in prison compounds the obvious and substantial miscarriage of justice in this matter.

11. The standard time frame provided by Missouri Rule for processing habeas corpus petitions is based on the recognition that justice delayed is justice denied. The rules provide that when a facially valid petition for writ of habeas corpus is filed, this Court “shall *forthwith* grant the writ or issue an order directing the respondent to show cause why the writ should not be granted.” Rule 91.05 (emphasis added). The standard response time allowed under the rule is “*not ... later than three days after service.*” Rule 91.05 (emphasis added). Further, “When the answer is filed, the court may proceed with the hearing *not more than five days after the filing of the answer* unless the person being restrained requests a longer time or for good cause additional time is allowed.” Rule 91.15 (emphasis added). Thereafter, “The court shall *forthwith* hear and determine the matter.” Rule 91.17.

12. Although the rapid pleading deadlines set forth in Rule 91 might be burdensome to the Court in light of the substantial evidence Mr. Lincoln has submitted in support of his petition, Mr. Lincoln respectfully suggests that this Court issue a scheduling order consistent with the gravity of the crime and the merit of Mr. Lincoln’s case for innocence. A relatively rapid time table is appropriate in a case such as Mr. Lincoln’s where years of litigation between the

parties leads to the inescapable conclusion that there is no evidence whatsoever linking Mr. Lincoln to the crime.

WHEREFORE, for the foregoing reasons, counsel for Mr. Lincoln respectfully move this Court to:

1. Promptly issue the Writ of Habeas Corpus or an Order directing Respondent within three days to show cause why the writ should not be granted;
2. Include in the Writ or Order a scheduling order consistent with the spirit and provisions of Rule 91;
3. Grant such further relief as the Court deems just and equitable.

Respectfully submitted,

/s/ Tricia J. Bushnell
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CERTIFICATE REGARDING SERVICE

I hereby certify that it is my belief and understanding that counsel for Respondent, Jay Cassaday and Missouri Attorney General Chris Koster are participants in the Court's e-filing program and that separate service of the foregoing document is not required beyond the Notification of Electronic Filing to be forwarded on July 13, 2016 upon the filing of the foregoing document.

/s/ Tricia J. Bushnell
TRICIA J. BUSHNELL

CERTIFICATE REGARDING SERVICE

I hereby certify that it is my belief and understanding that counsel for Respondent, St. Louis City Attorney are participants in the Court's e-filing program and that separate service of the foregoing document is not required beyond the Notification of Electronic Filing to be forwarded on December 14, 2015 upon the filing of the foregoing document.

/s/ Tricia J. Bushnell

TRICIA J. BUSHNELL