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Columns

Charles Flowers

After two decades, justice still denied

By Charles Flowers, Special to the Times
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Just one year after Florida lawmakers crafted a plan to compensate victims who were wrongly imprisoned, the extraordinary requirement that the victim prove "actual innocence" of the crime he or she did not commit is frustrating the claim of the first to seek relief.

James Joseph Richardson, one of the most obvious petitioners imaginable for compensation under the 2008 law, was recently denied the \$1.1 million the law allows. Already a casualty of the justice system, he is being wronged again.

Richardson was falsely accused of poisoning seven of his children to death in Arcadia more than 40 years ago. Prosecutors claimed he did it for insurance money, though he had no policy. He spent 21 years in prison — four of them on death row — before he was freed in 1989 after new evidence showed prosecutorial misconduct and implicated the family babysitter, who had heated and served the children's food.

Richardson was walked out of the DeSoto County Jail by Mark Lane, a Washington lawyer who had written a book questioning Richardson's trial, but whose own notoriety clouded the issue. Lane had big plans for Richardson: He would be the star of his own life story (hopefully in a movie) and the redeemer of Lane's spotty reputation. Richardson signed a "million-dollar contract" with Dick Gregory, Lane's pal who once shared a write-in ticket for the presidency with him. Richardson's real lawyer, the late Ellis Rubin of Miami, had done the heavy lifting and was fired by Lane as soon as the papers for Richardson's release were signed. Richardson was free, but not whole. He still is not.

After two decades of failed lawsuits and broken promises (the "million dollars" never materialized, nor did the movie), Richardson is healthy but impoverished, living off the earnings of his common-law wife, Teresa, in Kansas. Two years ago, he sent a lifeline to Rubin. He hoped Rubin would help him find the path God intended for him: "to be a man," he said while still wearing a prison uniform, "in my own shoes."

Under the 2008 law, Richardson's lawyers sought compensation for 21 ½ years. The law sets compensation at \$50,000 per year of wrongful incarceration. Richardson would be entitled to more than \$1 million.

But there is a catch. The Legislature in effect gave a veto to prosecuting attorneys. Under the law, the trial court must agree that the petitioner was actually innocent. "Any questions of fact, the nature, significance or effect of the evidence of actual innocence ... must be established by clear and convincing evidence by the petitioner," the law states.

Seth Miller, an attorney who directs Florida's Innocence Project in Tallahassee, has successfully freed seven victims of wrongful conviction. Overall, innocence projects in the United States have exonerated 241 inmates. Miller says he will not test the new Florida law: "James Richardson has already met the standard. Actual innocence is not a legal term. It has no meaning." Two of Miller's clients — including Alan Crotzer of Tampa, who served 24 years for a rape and robbery he did not commit — have received million-dollar awards without the burden of proving "actual innocence."

Miller and others question whether the mere objection of a prosecutor should outweigh the opinion of Janet Reno, the former U.S. attorney general and special prosecutor in Richardson's 1989 appeal, who spent three months investigating the case.

"Not only couldn't the state prove James Richardson was guilty beyond a reasonable doubt, but (he) was probably wrongfully accused," Reno wrote in her memorandum that put the stamp of error on Richardson's 1968 trial. She told reporters, "James Richardson should not have been tried for any crime."

For Richardson, arrested at 32 on the flimsiest of evidence and locked up until his release at 53, proving innocence may be an impossibly high bar at 73 since the prosecutor is declining to cooperate even 20 years after the results of Reno's investigation.

Reno's chief investigator, Don Horn, testified last month that it was "physically impossible" for Richardson

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to have left in the morning to pick oranges and return home to poison his children's lunch. Twenty years ago, Horn and Reno prepared a memorandum declining to prosecute because there was no basis to charge Richardson again, certainly not using the prosecution's ludicrous theory that Richardson committed the crime to collect insurance proceeds on a policy they knew he did not have. No motive plus no opportunity equals no case.

Then in July, at a surreal Miami hearing, prosecutors were back 20 years later with the same old determination not to budge. Reno and Horn had "opinions" — not "verifiable and substantial" proof of actual innocence, prosecutor Dennis Nales said. Richardson's lawyer, Robert Barrar, countered with the U.S. Supreme Court case, *Bousley vs. United States*, that reduced questions of innocence to a simple probability. Could any reasonable juror possibly vote to convict? If not, there is no basis for prosecution, hence actual innocence, Barrar said.

But state administrative law Judge Linda Rigot said *Bousley* did not apply to Richardson's case. Cases where "actual innocence" is even discussed are rarer than pet-friendly alligators. Now the question falls to a trial judge, who hopefully will see the facts for what they are: proof of actual, factual innocence.

If James Richardson is not innocent, who is? If he is denied compensation, who would dare seek it?

Charles Flowers reported on James Richardson's case for the Miami Herald in 1988-89.