

COMMONWEALTH OF
PENNSYLVANIA,

v.

WALTER OGROD

PHILADELPHIA COUNTY
COURT OF COMMON PLEAS

CRIMINAL SECTION – TRIAL
DIVISION

CP-51-CR-0532781-1992

**Brief of Sharon Fahy and Healing Justice Project as Amicus Curiae in
Support of Petitioner Walter Ogrod’s Petition for Postconviction Relief**

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I. Introduction

My daughter is never coming home but I wanted justice for her, not simply a closed case with an innocent person in jail. Two families have already been destroyed.

There is no question in my mind that Mr. Ograd is innocent and that he should be released from prison immediately.

Sharon Fahy, mother of Barbara Jean Horn

Anger. Shame. Fear. Isolation. Distress. Trauma. Depression. These are just some of the profoundly painful emotions and experiences victims and their families suffer when innocent people are convicted and incarcerated for crimes while the real perpetrators are left free.

The range and severity of experiences will vary from crime to crime and victim to victim. But studies of victims' experiences in wrongful incarceration cases have made clear that any closure a victim may feel after a conviction is no closure at all if the conviction was of the wrong person. In fact, a wrongful conviction is another evil and burden foisted upon victims of crimes who already have suffered so much at the hands of their real perpetrators and a justice system that often fails to treat victims with the dignity and care they need.

Amicus curiae Sharon Fahy, mother of murder victim Barbara Jean Horn, and Healing Justice Project, a national nonprofit organization for restorative justice and victim advocacy, respectfully submit this brief to aid the Court in understanding the uniquely disruptive, compounding, and harmful effects wrongful convictions of the innocent have on crime victims and their families.

Sharon Fahy respectfully requests that the Court grant Petitioner Walter Ograd's Petition for Postconviction Relief.

II. Statement of the Interests of Amicus Curiae

Amicus curiae Sharon Fahy is the mother of the victim, Barbara Jean Horn, who was murdered brutally at the age of four years old in July 1988. Barbara Jean was Sharon Fahy's only child.

Amicus curiae Healing Justice Project is a national nonprofit organization that serves individuals who have experienced trauma and inequity in the justice system due to a wrongful conviction. Through restorative justice and justice reform, Healing Justice provides post-trial support and recovery to crime victims, survivors, and their families in cases involving post-conviction claims of innocence and exonerations. It also provides post-prison support and recovery to returning citizens and their families in cases where innocence has been proven.

Healing Justice was founded by Jennifer Thompson based on her personal experience as a crime survivor whose case resulted in an exoneration more than a decade after the original trial and conviction. Jennifer became a pioneer of restorative justice in these cases through building a friendship with the innocent man wrongly convicted in her case, Ronald Cotton. They later co-authored the bestselling book, *Picking Cotton: Our Memoir of Injustice and Redemption*. Jennifer went on to create peer support for other crime victims and survivors from similar cases before launching Healing Justice in 2015.

Healing Justice serves all who have been directly harmed in these cases: crime victims, survivors, and their families, as well as the innocent who were wrongly convicted and their families. It offers programs for others who have been affected by

these cases: jurors, judges, police, prosecutors, victim advocates, and other justice and social service providers.

Healing Justice's work is led by real people with lived experiences, all of whom contribute their own unique perspectives to Healing Justice's goals and programs. Through all of its work Healing Justice strives to restore the voices of those harmed and provide them with peer support and individual healing. Healing Justice also strives to build relationships across all stakeholders to create collective healing and prevent future harm.

III. Argument

A. Wrongful Convictions Harm Victims and their Families.

The injustices and harms to wrongfully convicted and incarcerated individuals are obvious, extensive, and cannot be overstated. Equally obvious are the facts that no person has a valid interest in the incarceration of an innocent person and all citizens have an interest in truth, compassion, and justice ultimately prevailing and freeing the innocent from wrongful convictions and incarcerations. But beyond such obvious societal interests, victims and their families have distinct interests in wrongful conviction proceedings as wrongful convictions often directly and personally harm them, too. As the Pennsylvania Supreme Court has recognized:

While an erroneous eyewitness identification which leads to the wrongful conviction of an innocent defendant no doubt generates great suffering on the part of the individual and his or her family, and possibly death in the capital arena, it is not an issue that impacts only the wrongfully accused; incorrectly identifying their attackers can be traumatizing for a victim, as well, due to the guilt of convicting an innocent person, and the resulting awareness

that the criminal who perpetrated the crime remains at large.

Commonwealth v. Walker, 92 A.3d 766, 779–80 (Pa. 2014); *see also id.* at 792 n.11. In fact, “[f]or some victims, the impact of the wrongful conviction may be comparable to—or even worse than—that of their original victimization.” Seri Irazola, Ph.D., Erin Williamson, Julie Stricker, & Emily Niedzwiecki, *Study of Victim Experiences of Wrongful Conviction*, ICF International (September 2013) (“Report”), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/244084.pdf>. This is the key and stunning finding of the September 2013 Report funded by the National Institute of Justice, United States Department of Justice.

The criminal justice process already imposes significant traumas upon victims, independent of the harms suffered from the underlying crime. Jeannie Bishop & Mark Osler, *Prosecutors and Victims: Why Wrongful Convictions Matter*, 105 J. Crim. L. & Criminology 1031, 1041 (Fall 2015). That “trauma to victims is all the worse when the convictions obtained in their cases turn out to be wrong.” *Id.* Those profound additional traumas include, without limitation:

- Intense feelings of responsibility (however misplaced) because another innocent individual is made to suffer. The victim or family even unwittingly can be made to take on the role of perpetrator, particularly when victims or their families were used as witnesses in the prosecution’s flawed case.
- The additional sense of responsibility victims may feel for failing to protect the community from the actual criminal who might then have remained free to victimize even more individuals.
- Denying closure to victims and their families and causing additional pain by reopening old wounds and proving that any past feeling of peace or closure was false.

- Denying justice to victims and their families as finite resources are diverted from investigating and prosecuting the real perpetrators and instead spent on prosecuting and incarcerating an innocent person.

More specifically, more than one half of the victims interviewed for a comprehensive study of victim experiences underlying the Report “described the impact of the wrongful conviction as being comparable to, or worse than, their original victimization.” Report at 44. “In cases of murder, some victims equated the exoneration to their family members being murdered all over again.” *Id.* In addition, “[t]he majority of the victims also reported intense feelings of guilt.” Seri Irazola, Ph.D., Erin Williamson, Julie Stricker, & Emily Niedzwiecki, *Addressing the Impact of Wrongful Convictions on Crime Victims*, NIJ Journal, Issue No. 274 (December 2014) (summarizing findings from the Report), available at <https://nij.ojp.gov/library/publications/addressing-impact-wrongful-convictions-crime-victims>. “Other emotions expressed by victims were fear, anger, isolation, helplessness, devastation, depression, and at least one victim experienced suicidal ideation.” Report at iv; *id.* at 46.

One victim stated: “It was harder going through the revictimization than it was through the rape. . . . Now you have the same feelings of that pain. You have the same scariness. You have the same fear. You have the same panic, but now you have the flood of guilt on top of it.” *Id.* at 44.

Victims also experience shame and fear as media coverage can insinuate or lead others to believing the victim is responsible for the innocent person being

incarcerated. Victims reported feeling as if they were now the “perpetrator” and that roles were switched. *Id.* One rape victim explained, “For [several] years, I had been quite comfortable with my role as the victim. When the exoneration happens, that exoneree becomes the victim, and I, the rape victim, become the offender. The roles switch, and it’s a role you don’t know what to do with.” *Id.* at 65. Comments on blogs, other Internet sites, and in newspapers can be “particularly painful.” *Id.* at 47.

Some victims experienced not only terror for their own safety that the real offenders remained at large, but also an incredible sadness and misplaced responsibility that the real offenders might have harmed or will harm other individuals. As one victim recounted, “I felt like I had kept a rapist on the streets . . . and failed the city. I failed everybody, and that was a burden that I put on myself and kept it there for probably the next 8 years.” *Id.* at 45; *see also* Lara Bazelon, *Ending Innocence Denying*, 47 Hofstra L. Rev. 393, 422 (Winter 2018) (“Some learn, to their horror, that the true perpetrator went on to commit other horrific crimes and feel a sense of profound guilt and responsibility.”).

Indeed, the Innocence Project reports that of 367 DNA exonerees to date, 162 actual assailants of the underlying crimes have been identified. Innocence Project, *DNA Exonerations in the United States*, <https://www.innocenceproject.org/dna-exonerations-in-the-united-states/> (last accessed April 8, 2020). “Those actual perpetrators went on to be convicted of 152 additional violent crimes, including 82 sexual assaults, 35 murders, and 35 other violent crimes while the innocent sat behind bars for their earlier offenses.” *Id.*; *see also* Bishop & Osler at 1044

(referencing Innocence Project statistics). All of society suffers when an innocent person is the victim of a crime, but it is an especially cruel twist of the justice system that victims of crimes are made to feel responsible for bad acts committed by the true offender after society incarcerated an innocent person for the crime.

Healing after a crime can be arduous, all-consuming, and forever incomplete. But “when wrongfully convicted cases are exonerated, sometimes decades after the crime has occurred, it can completely disrupt the lives of these victims, disrupt the healing process, and result in revictimization. As a victim’s sense of safety and closure disappears, initial reactions may include disbelief, guilt, anger, fear, and confusion.” Report at 12 (citations omitted). One victim characterized that disruption as follows: “You spend your whole life trying to put [the crime] in its place; then to have to come around and revisit everything. And you try to remember every single detail because you want to know where you went wrong . . . And so you do; you spend your whole time trying to go back to a place that you’ve been trying leave for such a long time.” *Id.* at 45.

The passage of time and waste of resources prosecuting an innocent can also divert finite resources and impede the ability to ever bring the true offender to justice, whether that is because of the expiration of the statute of limitations or the loss of evidence over time. *See* Bishop & Osler at 1046. “In some cases DNA may identify the actual offender; however, without this identification, a closed case may become a cold case. Victims often want assurance that law enforcement will pursue the real perpetrator with the same vigor used to investigate the original crime; however, this

is not possible in cases where the statute of limitations has passed. Victims may direct their anger and outrage towards the criminal justice system as they lose their preconceived notions of truth and justice.” Report at 12.

To be clear: these harms are due to the wrongful incarceration. They may become known upon the determination that an innocent person was incarcerated for the underlying crime committed against the victim, but are not due to the act of freeing an innocent person. No society has a valid interest in the incarceration of innocent individuals. In fact, the best way to prevent victims from the harms associated with wrongful convictions, “is to reduce the chance of wrongful conviction occurring.” *Id.* at 60. Moreover, “For victims who had believed in the wrongfully convicted person’s innocence and actively supported the exoneration, the exoneration had an important and positive impact on their emotional and psychological well-being.” *Id.* at 46.

B. The Continued Incarceration of Mr. Ograd is Harmful to Sharon Fahy and She Supports His Immediate Release.

Healing Justice supports Sharon Fahy’s rights to be heard and to explain her perspectives to the Court. Healing Justice notes that Ms. Fahy’s experiences are consistent with many of the same awful, excruciating emotions victims and their families often experience as a result of a wrongful conviction of an innocent person, on top the harms they already suffered due to the underlying crime.

The Declaration of Sharon Fahy, attached to the April 7, 2020 Joint Amended Emergency Motion for Expedited Ruling on Conceded Claims, explains that since the day Barbara Jean was murdered, Ms. Fahy’s goal was always to make sure whoever

murdered her daughter was brought to justice. Fahy Decl. ¶ 3. She followed the investigation and two trials of Walter Ogrod intensely, and continued to follow them after his conviction and death sentence. *Id.*, ¶¶ 4–8.

As Ms. Fahy stayed in touch with the District Attorney’s Office over the years regarding Mr. Ogrod’s postconviction relief petitions, she began to have concerns as to whether Mr. Ogrod was the person who killed her Barbara Jean. *Id.*, ¶¶ 9–10. Since 2018, she has worked closely with the Conviction Integrity Unit of the District Attorney’s Office to understand their review and analysis of the case, and how they initially came to the conclusion that Mr. Ogrod was likely innocent of the crime. *Id.*, ¶¶ 11, 13–15.

It was “painful” to Ms. Fahy to learn that what she was told had happened to her daughter was not even correct. *Id.*, ¶ 15. That caused further doubts in her mind as to Mr. Ogrod’s guilt and then wonders of wanting to know who the real perpetrator was who killed Barbara Jean. *Id.*, ¶ 16.

When the Conviction Integrity Unit informed her it would file a document in Court agreeing that Mr. Ogrod’s conviction should be vacated, she reviewed it closely on her own and with her attorney. *Id.*, ¶¶ 17–19. Ms. Fahy came to the independent conclusion that Mr. Ogrod’s conviction should be vacated. *Id.*, ¶ 19.

Going through the process of reviewing the evidence relied upon by the District Attorney’s Office has been “excruciating” for Ms. Fahy. *Id.*, ¶ 20. She is “sad and angry that the person who took [her] daughter’s life is likely walking free,” *id.*, ¶ 22, and she is “sad to think he may have destroyed other people’s families,” *id.*, ¶ 23.

Profoundly, Ms. Fahy explains that a conviction and continued incarceration of an innocent person does no good for her, and only harm. “My daughter is never coming home but I wanted justice for her, not simply a closed case with an innocent person in jail. Two families have already been destroyed. There is no question in my mind that Mr. Ograd is innocent and that he should be released from prison immediately.” *Id.*, ¶¶ 24–25. “Keeping Mr. Ograd in prison does nothing to accomplish my goal of bringing the person that killed my Barbara Jean to justice.” *Id.*, ¶ 26. To the contrary, Ms. Fahy declares that “[t]he possibility that an innocent man might die in jail would only serve to multiply the pain Barbara Jean’s family has suffered.” *Id.*, ¶ 29.

IV. Conclusion

For the reasons and in the manner set forth above, Sharon Fahy and Healing Justice Project support Petitioner Walter Ograd’s Petition for Postconviction Relief, and Sharon Fahy respectfully requests that the Court grant the Petition.

Respectfully submitted,

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April 8, 2020