



Posted: Sept. 23, 2010

Time limit on evidence would deny justice for innocents

JEFF GERRITT

It already takes a minor miracle to get innocent people out of prison. If Wayne County Prosecutor Kym Worthy prevails, Michigan will foreclose even that faint hope of justice.

Her office has proposed changing Michigan's court rules to keep prisoners from presenting new evidence of their innocence after the first anniversary of their conviction. A convict could not file such a claim if the exculpatory evidence could have been discovered earlier with due diligence -- in other words, good lawyering.

That's a big "if" in Michigan, with arguably the nation's worst indigent defense system. Overextended court-appointed lawyers routinely fail to discover evidence that could keep impoverished clients out of prison.

An innocent prisoner set free

Ask Detroiter Dwayne Provience.

Five years ago, he was locked up in Mound Correctional Facility, facing a lifetime behind the walls. Fortunately, miracles still happen. New evidence found by the Michigan Innocence Clinic freed him last November.

I talked to Provience last week outside the Michigan Hall of Justice in Lansing, after he testified before the Michigan Supreme Court about the proposed rule change.

"If this rule had been in effect, I wouldn't be here," said Provience, 37, who now works in maintenance and wants to become a personal trainer. "It took almost 10 years for the truth to come out. Being in prison and knowing I didn't do it -- there's

no way I can explain the pain."

Established in January 2009, the Michigan Innocence Clinic at the University of Michigan Law School is the nation's only innocence project dedicated to fighting wrongful convictions without DNA or biological evidence. Nearly 20 law students work under clinical professors David A. Moran and Bridget McCormack.

What they found last year, in working to free Provience, was an unholy brew of bad lawyering and police misconduct that too often passes for justice in Michigan.

In 2001, Provience was convicted of murdering Rene Hunter at a crowded intersection in northwest Detroit. Seven witnesses, including an off-duty police officer, could have cleared Provience. But his lawyer, who was later disbarred, never even contacted them.

The prosecution's sole witness, Larry Wiley, a crack addict who came forward after he was arrested for burglary, admitted under oath in 2006 that he didn't see the shooting. Wiley, who had been locked up several times before, said police offered him a deal if he fingered Provience.

Worthy was not prosecutor when Provience was convicted, and she finally joined the Innocence Clinic in a motion to dismiss the conviction. Provience's trial lawyer was never given key evidence -- a police memo that pointed to a drug gang as the likely killers. Students working for the Innocence Clinic uncovered the memo while working on another case.

But the evidence that freed Provience didn't emerge until eight years after his conviction. A rule limiting such evidence to a year would preclude most prisoners with new evidence from having their claims heard.

Wrongful convictions

It's true, as Worthy argued in a Sept. 16 column, that new post-conviction motions could divert "scarce resources from cases involving defendants newly convicted." But keeping people with wrongful convictions out of prison is a far more compelling moral claim. Nor does the prosecutor's office argument that due diligence would apply to prisoners -- not their attorneys -- stand up to a straightforward reading of the rule change. In any case, no one should want to hinder new evidence about a wrongful conviction from seeing the light of day.

Based on DNA exonerations, more than 1,000 of Michigan's 45,000 prisoners are probably innocent -- a thought that should shake everyone in Michigan. Wrongful

convictions not only keep the wrong people in prison, at a cost to taxpayers of \$35,000 a year, but also leave the guilty person on the street.

Those running the criminal justice system, including Supreme Court justices, should ensure that wrongfully convicted prisoners get out -- not make it nearly impossible for them to do so.

It's no time to outlaw miracles in Michigan.

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