



PROVING INNOCENCE
Freeing Those Wrongfully Convicted

May 18, 2022

The Honorable Dana Nessel
Attorney General
State of Michigan
G. Mennen Williams Building, 7th Floor
525 W. Ottawa Street
P.O. Box 30212
Lansing, MI 48909.

Dear Attorney General,

We are aghast and disgusted with the CIU and your decision not to grant justice to a wholly innocent man, Temujin Kensu (aka., Fredrick Freeman). This is unconscionable and unacceptable and a betrayal of your claim the CIU would fight for true justice for the wrongfully convicted. That is hardly the case and the CIU is being revealed as an empty vessel that will continue to do very little on behalf of those wrongfully convicted by our justice system.

Most disturbing, is that we and so many others were misled by the CIU in its mission and intentions. Now, and only after your CIU's review of Mr. Kensu's case has concluded, we learn you have completely changed the definition of "new evidence". The CIU's letter of May 17, 2022 from assistant AG Valerie Newman says the CIU is using an appellate court standard definition of "new evidence" that states, "New evidence means evidence not at all considered at trial or during post-conviction appeals." This is an extremely significant change, making the CIU function as simply another appeals court that ignores all the evidence of the actual innocence of a wrongfully convicted person. (Also, without question, there is much evidence and misconduct that was not heard by the jury, let alone in his appeals. We would be glad to set that forth for you.)

Please also note the following August 6, 2022 email exchange which one of us, David Sanders, had with CIU Director Robyn Frankel over the definition of "new evidence" that the CIU was using:

Message from Sanders to Ms. Frankel: "In your letter to me you only mentioned "new evidence". At the conference where you and I attended last summer, you confirmed that "evidence not heard by the jury" would be considered "new" for the purposes of the CIU's work (paraphrased but similar)."

Would you help us at PI understand what criteria the CIU will use to exonerate and free the clearly innocent? Many cases are rife with such abuses as corruption, denial of evidence, witness intimidation, prosecutorial misconduct, etc., (which were never presented to or heard by a jury). Would these be considered

"sufficient" new evidence in cases where there is absolutely no strong or direct evidence (or any) for guilt?

That was my understanding from past events you attended and spoke at and hope you can simply confirm that."

Response from Ms. Frankel: "Just back in town but trying to get back to you. You are correct in your recollection. Evidence which was not presented to the jury (though it might have been known at the time of trial) may be considered "new evidence" for CIU purposes. Also, any evidence which illustrates that a person is innocent of the offense will be considered by the Unit. This would include police or prosecutor misconduct where that misconduct implicates a person's factual innocence."

Response to Ms. Frankel: "Thank you for the wonderful news and confirmation. That was the exact standard we were hoping to see implemented and the one that is most likely to ensure justice for all! Bless you all....."

Note that CIU Director Frankel does mention that "...any evidence which illustrates that a person is innocent of the offense will be considered by the Unit. This would include police or prosecutor misconduct where that misconduct implicates a person's factual innocence." She clearly does not mention in any way "post-conviction appeals". That was our concern from the very formation of the CIU because such a provision completely hobbles the ability of the CIU to do justice for so many wrongfully convicted individuals.

Why was the definition of "new evidence" revised and why were we being so badly misled? Moreover, If the CIU is simply going to operate, in effect, as another appeals court that will ignore all evidence of actual innocence, why do we need a state CIU? Are innocent people to submit applications to the CIU and expect that body will examine the evidence and misconduct that caused the wrongful conviction when now we know that clearly will not happen? These folks have already had the run around by the courts. Why should they get the same treatment by the CIU?

Your decision to use an appellate court standard for new evidence is perplexing and makes one wonder what is the real reason for not addressing Mr. Kensu's wrongful conviction? We will be investigating that and working with our media partners (newspapers, cable and network TV, and the social media) to determine why the worst wrongful conviction in Michigan remains. There will be no hiding or quick dismissal of such egregious non-action on this 35-year tragedy.

Beyond the legal technicalities that are unfortunately delegitimizing the CIU, please answer a simple question: Do you believe Mr. Kensu is actually innocent? As an advocate for justice that you have been, that should be something very easy to answer. Others in the criminal justice system have not been timid and have had the courage, some at high personal expense, to say that he should not be imprisoned as the abundance of evidence and alibi witnesses demonstrate, not to mention the misconduct of former prosecutor Robert Cleland that caused the trial jury to get it wrong. For example, we call your attention to Chief Judge Denise Page

Hood, U.S. District Court, Eastern District, who in her 2010 habeas ruling stated that Mr. Kensu's wrongful conviction was achieved through prosecutorial misconduct, though unfortunately, her decision was overruled on purely technical grounds having nothing to do with his actual innocence. Also note that this travesty has been recognized but highly respected individuals who have examined it including two Chief Justices of the Michigan Supreme Court; the President of the Michigan Council of Professional Investigators; a 30-year federal prosecutor; former FBI agents; state and local law enforcement officials; a U.S. Senator and U.S. Congressman; the retired Co-Director of the Cooley Innocence Project; Michigan State senators and representatives; and a detective who spent 31 years in the very same police department where Temujin was arrested. Moreover, the prestigious Michigan Innocence Clinic of the University of Michigan's Law School represents Temujin and would not be doing so if there were a trace of guilt.

None of these respected individuals resorted to a technical definition of "new evidence" to avoid calling out an appalling wrongful conviction. All were willing to do the right thing. In that regard, please answer these two questions: Do you believe Mr. Kensu is actually innocent? Do you believe his conviction has integrity?

In addition, we are confident that Valerie Newman, the assistant attorney general assigned to Kensu's case, and her staff conducted a comprehensive investigation and generated a massive report not only confirming his complete innocence, but detailing a mountain of abuses and violations that led to his wrongful conviction. That conclusion of complete innocence is hardly surprising since every evaluation of Kensu's innocence, excepting the prosecution's, has made the same determination. We are asking that you forward a copy of Ms. Newman's report to us, as we are sure you stand for transparency in government.

We hope you do not dismiss this complaint but rather move justice forward. God help all of us if you do not seriously reexamine your position. And please do not take this as a partisan "shot". We voted for you, and so did so many others in the justice community, believing you meant what you promised in addressing wrongful convictions. We also donated to your campaign. We cannot express the outrage you have generated among all those who believe true justice many times goes wrong in our court system but hoped that the CIU would make a difference. The decision concerning Kensu deflates the entire wrongful conviction community who now realize the CIU is a paper tiger.

May 23rd will be Temujin Kensu's 59th birthday and he has languished behind bars for almost 36 years, entering prison as a young man of 23 and now suffering from a number of serious health issues that will surely shorten his life. He shouldn't spend another day, yet another birthday, away from his family and loved ones. It is shameful and unacceptable that the CIU is dismissing Mr. Kensu's case on technical grounds, as happened with his habeas, and in so doing frustrating justice once more.

We will end with what the flagship newspaper of Port Huron (where the murder occurred), *The Port Huron Times Herald*, concluded in an October 2010 editorial: *"Much about this case is troubling, starting with the Port Huron legal community's abject failure to police itself. It is now clear Dean's addictions (Temujin's court appointed attorney) were well-known to fellow lawyers in 1986, yet they did nothing to protect the integrity of our courts. The system failed Scott Macklem (the victim). It failed Fredrick Freeman. It failed all of us."*

And now the CIU has failed us as well. As one Emmy Award winning NBC investigative journalist has said, "The question is not Temujin's actual innocence. That's obvious. The question is why is he still in prison?"

Yours very truly,



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