

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, MISSISSIPPI

CURTIS FLOWERS,

Claimant

v.

STATE OF MISSISSIPPI,

Respondent.

2020-0150 CVM

COMPLAINT

1. This claim is brought by Curtis Giovanni Flowers pursuant to Miss. Code Ann. §11-44-1, *et seq.* The respondent is the State of Mississippi, pursuant to Miss. Code Ann. §11-44-5. This claim is based on the fact that Mr. Flowers was wrongly convicted of capital murder. Mr. Flowers served twenty-three years in prison for this crime that he did not commit. He endured an unprecedented six capital murder trials, two of which resulted in hung juries and for of which ended in convictions and death sentences. Each conviction and death sentence was reversed on appeal due to the prosecutor's egregious misconduct. The most recent conviction was reversed by the Supreme Court of the United States on grounds that the prosecutor's racial discrimination in jury selection violated his rights under the Fourteenth Amendment to the United States Constitution. After remand, bail was granted in December of 2020. After a thorough review of the evidence, the Mississippi Attorney General moved to dismiss all charges against Mr. Flowers with prejudice and the trial court granted the motion.

FILED

NOV 16 2020

LAVELLE G. MARTIN, CIRCUIT CLERK

Lavelle G. Martin

Statement of Facts

2. In 1997, a Montgomery County Grand Jury returned four indictments against Mr. Flowers, each charging him with a separate count of capital murder relating to the murder of four people at the Tardy Furniture Store in Winona, Mississippi on the morning of July 16, 1996: Bertha Tardy, Robert Golden, Carmen Rigby, and Derrick Stewart.
3. Having separated the murder into four indictments, the State selected the Bertha Tardy indictment, Montgomery County Case No. 7447 (*Flowers I*), for the first trial. Mr. Flowers was tried by a jury, found guilty, and sentenced to death on October 17, 1997.
4. The State proceeded to try Mr. Flowers again, this time on the Derrick Stewart indictment, Case No. 7450 (*Flowers II*). On March 31, 1999, Mr. Flowers was convicted and sentenced to death.
5. On December 21, 2000, the Mississippi Supreme Court reversed Mr. Flowers's conviction and sentence in *Flowers I* on the basis of prosecutorial misconduct, including introduction of evidence concerning other separately indicted crimes, arguing facts not in evidence, improper cross-examination of Mr. Flowers, and improper comment by the trial court. *Flowers v. State*, 773 So. 2d 309 (Miss. 2000) (*Flowers I*).
6. On April 3, 2003, the Mississippi Supreme Court reversed Mr. Flowers's conviction and sentence in *Flowers II* on the basis of the same kinds of prosecutorial misconduct that occurred in *Flowers I*, including introduction of evidence concerning other separately indicted crimes, improper attempts to impeach witnesses without a factual basis to do so, and gross misstatements of the evidence by the prosecution during closing argument. *Flowers v. State*, 842 So. 2d 531 (Miss. 2003) (*Flowers II*).

7. The Mississippi Supreme Court remanded both *Flowers I and Flowers II* to the Montgomery County Circuit Court. On remand, the State abandoned its effort to charge and try the four murders separately. Mr. Flowers was again tried by a jury and, on February 11, 2004, was convicted of four counts of capital murder and sentenced to death (*Flowers III*).
8. On February 1, 2007, the Mississippi Supreme Court again reversed Mr. Flowers's convictions and sentences on the basis of egregious prosecutorial misconduct, including overt racial discrimination by the prosecution in its exercise of peremptory challenges, and remanded to the Montgomery County Circuit Court for a new trial. *Flowers v. State*, 947 So. 2d 910, 939 (Miss. 2007) (*Flowers III*).
9. Mr. Flowers was tried a fourth time in November 2007 (*Flowers IV*). That trial ended in a mistrial when the jury was unable to reach a verdict.
10. The State of Mississippi then tried Mr. Flowers a fifth time in September 2008 (*Flowers V*). Again, the jury was unable to reach a verdict on guilt or innocence, and Mr. Flowers's fifth trial ended in a mistrial.
11. Undeterred, the State pressed forward, trying Mr. Flowers for a sixth time in June 2010 (*Flowers VI*). On June 19, 2010, the jury found Mr. Flowers guilty of four counts of capital murder and sentenced him to death. A divided Mississippi Supreme Court affirmed his convictions and sentences on November 13, 2014, and denied rehearing on March 26, 2015. *Flowers v. State*, 158 So. 3d 1009 (Miss. 2014), *reh'g denied* (Mar. 26, 2015). Three justices dissented. Justice Dickinson filed a dissenting opinion, which Justices King and Kitchens joined. Justice King filed a dissenting opinion that was joined by Justices Dickinson and Kitchens.
12. Mr. Flowers petitioned the Supreme Court of the United States for writ of certiorari, which the Court granted on June 20, 2016. In its order, the Court vacated the judgment of the Mississippi

Supreme Court and remanded the case “for further consideration[.]” *Flowers v. Mississippi*, 136 S. Ct. 2157 (Mem.) (2016). On remand, the Mississippi Supreme Court affirmed Mr. Flowers’s conviction on November 2, 2017. *Flowers v. State*, 240 So. 3d 1082 (Miss. 2017).

13. The Supreme Court of the United States again granted Mr. Flowers’s petition for writ of certiorari on November 2, 2018. *Flowers v. Mississippi*, 139 S. Ct. 451 (Mem.) (2018). In its decision rendered on June 21, 2019, the Supreme Court reversed Mr. Flowers’s conviction from his sixth trial on the grounds that the State of Mississippi violated his rights under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. The Court held that the State had violated the constitutional rule first set out in *Batson v. Kentucky*, 476 U.S. 79 (1986), prohibiting States from discriminating on the basis of race when exercising peremptory challenges against prospective jurors in a criminal trial. *Flowers v. Mississippi*, 139 S. Ct. 2228 (2019). Writing for a seven-Justice majority, Justice Brett Kavanaugh declared that the Court “enforce[d] and reinforce[d] *Batson* by applying it to the extraordinary facts of this case.” *Id.* at 2235. The Supreme Court underscored that “[t]he State’s relentless, determined effort to rid the jury of black individuals strongly suggests that the State wanted to try Flowers before a jury with as few black jurors as possible, and ideally before an all-white jury.” *Id.* at 2246.

14. For nearly twenty-three years, Curtis Flowers was constantly locked in a jail or prison without bail through the course of the numerous trials and reversals. When bail was finally granted on December 16, 2019, Judge Joseph Loper made it clear that the evidentiary outlook on the case had changed dramatically, and that the developments since the sixth, and last, trial raised questions as to whether an unprecedented seventh trial should be pursued. Bail Hearing Tr. at 39, *State v. Flowers*, No. 2003-0071-CR (Miss Cir. Ct. Dec. 16, 2019).

15. The key prosecution witnesses recanted or had been impeached by recent events. The Court noted as much in the December 2019 hearing at which Mr. Flowers was released on bail:

Since the last trial, witnesses Odell Hallmon, Clemmie Fleming and Ed McChristian have recanted or drastically changed their previous testimony that was offered against Mr. Flowers. From other pleadings that have been filed in this case, this Court is also on judicial notice that Patricia Hallmon, another witness that testified against Mr. Flowers in the past, has been convicted of multiple counts of federal income tax fraud, which will undermine her credibility in a retrial.

Id. at 38–39.

16. With no valid conviction of Mr. Flowers after conducting six trials, the Court noted that the State’s case amounted to nothing more than circumstantial evidence:

The Court will also note that Odell Hallmon’s testimony was the only direct testimony against Mr. Flowers. Absent his testimony, the case is wholly a circumstantial evidence case, which places the higher burden on the prosecution of having to prove Mr. Flowers guilty beyond a reasonable doubt and to the exclusion of every reasonable hypothesis consistent with innocence. That is the highest burden of proof that is required in any type case in the State of Mississippi.

Id.

17. The Court signaled that new exculpatory evidence would be weighed in a hypothetical seventh trial, which would diminish the State’s case against Mr. Flowers:

The Court . . . has been also made aware of possible alternative suspects as well as possible exculpatory evidence that has not been considered at previous trials that were conducted. In the next trial, should one occur, the State of Mississippi is faced with the prospect of having to present a far weaker case to the jury than it’s had in the past while having to meet a higher burden of proof than it’s ever had to meet.

Id. at 39.

18. At the bail hearing, the prosecution argued that although one of these alternative suspects, Willie James Hemphill, was held in jail for several days in connection with this case, there was no evidence against him “other than maybe he had a pair of shoes and maybe someone saw him

around the store that day.” *Id.* at 29. But then the Court asked the prosecution a frank question: “Well, that’s about the same type evidence the State has against Mr. Flowers, isn’t it?” *Id.*

19. The evidence indicated this crime was committed by professional criminals. The July 16, 1996 Tardy Furniture murders were part of a larger spree of armed robberies and murders in commercial establishments and banks that plagued Montgomery and nearby counties from 1995 to 1997. Moreover, *eight days before the Tardy murders*, some person or persons broke into Tardy Furniture at night through the roof, attempted unsuccessfully to crack the safe, and fled through the side door, taking the side door key in the process. Astoundingly, it appears that the District Attorney and the investigators on the Tardy Furniture murder case never seriously investigated the possibility of a link between the murder-robbery and the unsuccessful attempt to breach the safe eight days earlier.

20. The crime scene itself reflects the actions of a precision shooter with criminal experience. The audacity and precision of the weekday morning murders at Tardy Furniture suggest that they were committed by a person or persons with a history of violence and methodical robberies.

21. A 26-year-old gospel singer with no criminal record, Mr. Flowers was always an unlikely suspect. There is nothing in his background to suggest that he would or could commit a brazen daylight robbery in a commercial establishment and kill four people with precision shooting. His peaceful disposition and tendency to avoid conflict, as confirmed by his spotless prison record spanning nearly twenty-three years, strikes at the foundation of the District Attorney’s theory that he was driven by anger to commit a quadruple murder.

22. Over the course of this twenty-three year prosecution, District Attorney Doug Evans claimed that Mr. Flowers was the State’s sole suspect. Time and evidence would reveal that to be untrue. As Judge Loper pointed out, at least one other suspect was held in the Montgomery

County jail for several days. Investigators placed a photograph of another in a photo array for witnesses to view. Despite these indications about other suspects, however, the District Attorney and his investigators neglected to conduct an in-depth investigation of any of them, and then decided not to disclose their existence.

23. The alternative suspects in this case include people with histories of violence, murder, commercial burglaries, and rooftop break-ins. One of them owned the gun that the prosecution claimed was the murder weapon. His cousin is a violent career criminal who was arrested for another commercial armed robbery in the spree that afflicted the Montgomery County area in the mid-1990s. Two of the alternative suspects wore Fila shoes, which allegedly were worn by a Tardy Furniture perpetrator. Most of them lived in Montgomery County and the others apparently were in Mississippi around the time of the murders.

24. The Mississippi Attorney General took over this case early in 2020 after District Court Attorney Doug Evans withdrew on January 6, 2020. Evans withdrawal occurred approximately three weeks after bail was granted and while a motion for his recusal was pending. On September 4, 2020, the Attorney General moved to dismiss with prejudice all charges against Mr. Flowers. Noting that her office had conducted “an independent review of the evidence” and “a thorough review of the case,” the motion acknowledged “there is no key prosecution witness that incriminates Mr. Flowers who is alive and available and has not had multiple, conflicting statements in the record.” The Attorney General determined it was “in the interest of justice that the State will not seek an unprecedented seventh trial of Mr. Flowers” and asked the Court to dismiss the indictment with prejudice.

25. The Court granted the motion to dismiss. In its order, the Court found “that in light of all of the facts and circumstances relating to this case and the record developed in it, the interests of

justice require that the State's motion to dismiss this case with prejudice be granted." Order of Dismissal, *State v. Flowers*, No. 2003-0071-CR (Miss Cir. Ct. Sept. 4, 2020).

This Claim Satisfies the Threshold Requirements of Miss. Code Ann. §11-44-3

26. Miss. Code Ann. §11-44-3 provides as follows:

(1) In order to present an actionable claim for wrongful conviction and imprisonment under this section, a claimant must establish by documentary evidence that:

(a) The claimant has been convicted of one or more felonies and subsequently sentenced to a term of imprisonment and has served all or any part of the sentence;

(b) On grounds not inconsistent with innocence:

(i) The claimant was pardoned for the felony or felonies for which sentenced and which are the grounds for the complaint and the pardon is based on the innocence of the claimant which must be affirmatively stated in the pardon; or

(ii) The judgment of conviction was vacated and/or reversed;

(c) If there was a vacatur or reversal, either the accusatory instrument was dismissed or nol prossed; or if a new trial was held, the defendant was found not guilty;

(d) The claimant's claim is not time-barred by the provisions of this act; and

(e) The claimant did not intentionally waive any appellate or post-conviction remedy otherwise available in order to benefit under this act.

(2) The claim shall be verified by the claimant.

Mr. Flowers's claim fulfills each of these requirements.

27. Mr. Flowers was first arrested and later convicted of capital murder and sentenced to death in 1997. He served almost twenty-three years in jail and prison until he was released on bail on December 16, 2019. Mr. Flowers meets the requirements of §11-44-3 (1)(a).

28. Mr. Flowers's most recent conviction was vacated by the Supreme Court of the United States on June 21, 2019. *Flowers v. Mississippi*, 139 S. Ct. 2228 (2019). All prior convictions were reversed on appeal by the Mississippi Supreme Court.

29. The Supreme Court's grounds for vacating the most recent conviction are certainly not inconsistent with innocence. Noting that "[e]qual justice under law requires a criminal trial free of racial discrimination in the jury selection process," *id.*, the Court concluded that the State denied Mr. Flowers a fair trial that would have afforded him an opportunity to prove his innocence. Far from focusing on the sixth trial alone, however, the Court acknowledged that "the State's pattern of striking black prospective jurors persisted from Flowers' first trial through Flowers' sixth trial." *Id.* at 2242. And in reviewing that final trial, the Supreme Court recognized that "[t]he State's actions in the first four trials necessarily inform our assessment of the State's intent going into Flowers' sixth trial. We cannot ignore that history. We cannot take that history out of the case." *Id.* at 2246. Similarly, the other reversals, all for prosecutorial misconduct, are not inconsistent with innocence. Mr. Flowers meets the requirements of §11-44-3(1)(b)(ii).

30. The State dismissed with prejudice the charges against Mr. Flowers on September 4, 2020. He meets the requirements of §11-44-3(c).

31. This claim is being filed in October 2020. Miss. Code Ann. §11-44-9 imposes a time limit for Mr. Flowers's claim, which Mr. Flowers meets. Mr. Flowers's deadline may be calculated from "three (3) years after either the grant of a pardon or the grant of judicial relief and satisfaction of other conditions described in Section 11-44-3(1)." §11-44-9(1). Mr. Flowers became able to satisfy the conditions of Section 11-43-3(1)(a)-(c) & (e) when the State dismissed charges on September 4, 2020, giving him a deadline, under this provision, of September 4, 2023. Mr. Flowers clearly meets this deadline, and therefore satisfies the requirements of §11-44-3 (1)(d).

32. Mr. Flowers, through counsel, appealed his convictions in *Flowers I*, *Flowers II*, *Flowers III*, and *Flowers VI*. While his petition for writ of certiorari regarding *Flowers VI* was pending with the Supreme Court of the United States, Mr. Flowers began post-conviction proceedings in this Court. Mr. Flowers has taken every opportunity to challenge his conviction. He satisfies the requirements of §11-44-3 (1) (e).

33. Accordingly, under Miss. Code Ann. §11-44-3, Mr. Flowers has presented an actionable claim for wrongful imprisonment and conviction.

Mr. Flowers is Innocent and Is Entitled to a Judgment of Compensation

34. Miss. Code Ann. §11-44-7 provides in part as follows:

(1) In order to obtain a judgment under this act, a claimant must prove by a preponderance of the evidence that:

(a) He was convicted of one or more felonies and subsequently sentenced to a term of imprisonment, and has served all or any part of that sentence; and

(i) He has been pardoned for the felony or felonies for which he was sentenced and which are the grounds for the complaint and the pardon is based on the innocence of the claimant which must be affirmatively stated in the pardon; or

(ii) His judgment of conviction was reversed or vacated; and

1. The accusatory instrument was dismissed or nol prossed; or

2. If a new trial was ordered, he was found not guilty at the new trial; and

(b) He did not commit the felony or felonies for which he was sentenced and which are the grounds for the complaint, or the acts or omissions for which he was sentenced did not constitute a felony; and

(c) He did not commit or suborn perjury, or fabricate evidence to bring about his conviction.

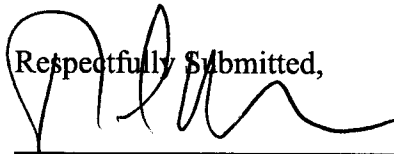
Mr. Flowers's claim fulfills each of these requirements.

35. As discussed in the previous section, Mr. Flowers was convicted of capital murder and sentenced to death. He served almost twenty-three years of his sentence before his conviction was vacated and, subsequently, charges against him were dropped. Mr. Flowers meets the requirement of §11-44-7(1)(a).

36. The evidence in this case demonstrates that Mr. Flowers did not commit the crimes for which he was convicted and sentenced and he meets the requirement of §11-44-7(1)(b)). Mr. Flowers did not commit or suborn perjury, or fabricate evidence to bring about his conviction. Mr. Flowers diligently challenged his wrongful conviction at every opportunity. He meets the requirement of §11-44-7(1)(c).

Relief

37. As detailed above, Mr. Flowers's claim meets all the requirements of §11-44-7(1) and is therefore entitled to compensation. Mr. Flowers seeks compensation in the amount of \$500,000 dollars. Miss. Code Ann. §11-44-7(2)(a) provides that a successful applicant shall be awarded \$50,000 for each year of imprisonment up to a maximum of \$500,000. Mr. Flowers was arrested in January, 1997. He remained in custody until he was released nearly twenty-three years later on December 16, 2019. As Mr. Flowers was imprisoned for over ten years, he is entitled to the maximum compensation available under the statute—\$500,000. A separate award of attorney's fees should also be granted as required by Miss. Code Ann. §11-44-7(2)(4).

Respectfully Submitted,


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Signed November 9, 2020