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OPINION COMMITTEE



Carole Keeton Strayhorn
Texas Comptroller of Public Accounts

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ACTION BY Nancy Fuller
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512/463-4000

FAX: 512/463-4965

P.O. Box 13528

AUSTIN, TEXAS 78711-3528

August 15, 2006

The Honorable Greg Abbott
Attorney General
State of Texas
Post Office Box 12548
Austin, Texas 78711-2548

FILE # ML-44953

I.D. # 44953

RQ-0523-GA

Dear General Abbott:

This is a request for a formal written opinion from your office concerning the proper interpretation of Section 103.001(b), Texas Civil Practice and Remedies Code. Specifically, my question concerns how this agency should apply the statutory prohibition against paying compensation to individuals who are wrongfully imprisoned for time that is served concurrently because of the individual's probation revocation on another offense.

This situation is directly presented by a wrongful imprisonment compensation claim filed by one of the so-called "Tulia defendants," Jason Paul Fry, on February 6, 2006, and will be presented by the claims of others similarly situated, which we have been advised will soon be filed.

The events surrounding the Tulia prosecutions have been widely reported in the state and national news media. In July 1999, 46 individuals, nearly all African Americans, were arrested in Tulia by a local drug task force and charged with the sale of small amounts of cocaine. Most of those charged were either convicted in the 242nd District Court of Swisher County or entered into plea bargains to avoid the risk of a certain conviction. I understand that a total of 38 individuals were convicted and 22 went to prison.

Following a state investigation and an investigation of the undercover agent involved in the arrests, the arrests and convictions were discredited. In August 2003, the Governor pardoned 35 of the individuals who had been convicted.

Mr. Fry was one of those pardoned. He had been sentenced to three years in the Texas Department of Criminal Justice (TDCJ) by the 242nd District Court of Swisher County, Cause No. B3288-99-07, for delivery of a controlled substance. He began his sentence on July 20, 1999 (the date of his indictment), and he was subsequently released from custody under mandatory supervision by action of the Texas Board of Pardons and Paroles on January 2, 2001. Mr. Fry received a clemency discharge from TDCJ on July 19, 2002, and was fully pardoned on August 22, 2003 (Proclamation No. 2003-00037), and restored to all rights of citizenship.

Mr. Fry sought compensation for wrongful imprisonment by filing an administrative claim with my office under Section 103.051, Texas Civil Practice and Remedies Code. All statutory filing requisites to payment have been met. The pertinent TDCJ documentation is enclosed.



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Although I am fully satisfied that a great injustice occurred in Tulia and that equity clearly justifies full payment, there is a statutory issue that I am compelled to present to you for your opinion. Specifically, Mr. Fry had a previous conviction for a completely unrelated felony offense in Potter County (Cause No. 36,604C), involving possession of a controlled substance. As part of his plea agreement, Mr. Fry received a sentence of 18 months and was granted probation. He was on probation for that offense at the time of his arrest in Tulia.

Solely because of the Tulia arrest and conviction, for which he has now been fully pardoned, Mr. Fry's probation related to the Potter County offense was revoked. As a result, Mr. Fry served his time in prison on the Tulia conviction concurrently with the sentence that had otherwise been probated on the unrelated drug offense in Potter County. There was a complete overlap of sentences, with no time being served in the custody of TDCJ that was solely attributable to the Tulia conviction. On the other hand, but for the wrongful Tulia conviction, there would have been no concurrency.

Section 103.001(b), Texas Civil Practice and Remedies Code, provides as follows:

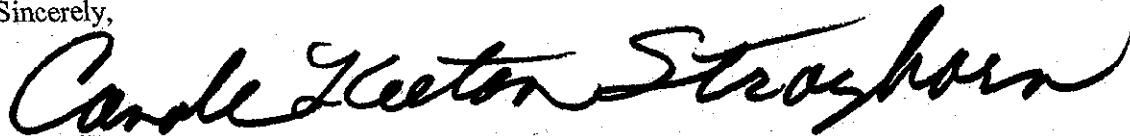
"(b) A person is not entitled to compensation under Subsection (a) for any part of a sentence in prison during which the person was also serving a concurrent sentence for another crime to which Subsection (a) does not apply."

Technically, this statutory language appears to disqualify Mr. Fry from entitlement to any compensation. However, the inequity is that it was his wrongful arrest and conviction for the Tulia drug charge that caused his probation in Potter County to be revoked.

My office is committed to administering this program in accordance with the statute, but as indicated I am also concerned with the equities in this case. Thus, I respectfully request your opinion on the following question. **May this office approve a claim for compensation under Chapter 103, Texas Civil Practice and Remedies Code, where there is a complete concurrency between the sentence for the wrongful imprisonment and for an unrelated offense if the concurrency occurred solely because of the wrongful imprisonment?**

Thank you for your assistance in this matter.

Sincerely,



Carole Keeton Strayhorn
Texas Comptroller

Enclosure