

STATE OF WISCONSIN

Senate Journal

One-Hundred and First Regular Session

FRIDAY, December 6, 2013

The Chief Clerk makes the following entries under the above date.

CHIEF CLERK'S ENTRIES

AMENDMENTS OFFERED

Senate Substitute Amendment 1 to **Senate Bill 242** offered by Senator Petrowski.

Senate Amendment 1 to **Senate Bill 394** offered by Senator Lasee.

SENATE ENROLLED PROPOSALS

The Chief Clerk records:

Senate Bill 384

Report correctly enrolled on 12-6-2013.

PETITIONS AND COMMUNICATIONS

LEGISLATIVE REFERENCE BUREAU CORRECTIONS

CORRECTIONS IN:

2013 SENATE BILL 384

Prepared by the Legislative Reference Bureau
(December 6, 2013)

In enrolling, the following correction was made:

1. Page 32, line 14: delete "appointment " has" and substitute "appointment" has".
2. Page 34, line 11: delete "a beneficiaries" and substitute "beneficiaries".
3. Page 47, line 18: delete "who is a related" and substitute "who is related".
4. Page 75, line 18: delete "is amended" and substitute "are amended".
5. Page 120, line 21: delete "attorneys fees" and substitute "attorney fees".
6. Page 133, line 10: delete "trust," and substitute "trust".
7. Page 137, line 8: delete "(6)" and substitute "(6)".
8. Page 150, line 13: delete "is amended" and substitute "are amended".
9. Page 159, line 5: delete "are amended" and substitute "is amended".

10. Page 162, line 2: delete "instrument, in" and substitute "instrument, in".

State of Wisconsin Claims Board

December 2, 2013

Enclosed is the report of the State Claims Board covering the claim of David R. Turnpaugh heard on September 11, 2013, and determined on November 25, 2013. Those claims approved for payment pursuant to the provisions of s.16.007 and 775.05 Stats., have been paid directly by the Board.

This report is for the information of the Legislature. The Board would appreciate your acceptance and publication of it in the Journal to inform the members of the Legislature.

Sincerely,
GREGORY D. MURRAY
Secretary

STATE OF WISCONSIN CLAIMS BOARD

CLAIM BY: DAVID R. TURNPAUGH

CLAIM NO. 2009-031-CONV

DECISION

This is a final determination of the State of Wisconsin Claims Board regarding a claim brought by Mr. David R. Turnpaugh on July 23, 2013. Mr. Turnpaugh brought his claim under Wis. Stat. §775.05 for compensation for innocent convicts. The Claims Board held a hearing on this matter on September 11, 2013, at which Mr. Turnpaugh appeared along with counsel.

PROCEDURAL BACKGROUND

The procedural and historical background for this decision is long and complex, and need not be repeated in its entirety. Notably, however, this is the third time that Mr. Turnpaugh has appeared in front of the Claims Board on this matter. On December 28, 2010, the Claims Board issued its first decision in this matter after a hearing, denying Mr. Turnpaugh's petition to the Claims Board for compensation as an innocent convict under Wis. Stat. §775.05, wherein it concluded that Mr. Turnpaugh had not presented clear and convincing evidence that he was

innocent of the crime for which he was convicted and that he failed to show that he was imprisoned within the meaning of Wis. Stat. §775.05. Mr. Turnpaugh appealed that decision. The Claims Board decision was originally upheld in circuit court, but eventually overturned on appeal. *See, Turnpaugh v. Claims Board*, Milwaukee County Circuit Court Case No. 11-CV-1362, September 7, 2011, and *Turnpaugh v. Claims Board*, 2012 WI App 72, 342 Wis. 2d 182.

Specifically, the Court of Appeals held that Mr. Turnpaugh was innocent as a matter of law and had proved his innocence under the requisite standard of Wis. Stat. §775.05. *Turnpaugh v. Claims Board*, 2012 WI App 72 at ¶6-8. The Court of Appeals also held that Mr. Turnpaugh had been imprisoned under the meaning of Wis. Stat. §775.05. *Id.*, at ¶10. The Court of Appeals then remanded the matter back to the Claims Board for “an assessment of what ‘will equitably compensate’ under the guidelines set out in Wis. Stat. §775.05(4).” *Id.*, at ¶11.

On December 12, 2012, the Claims Board took up Mr. Turnpaugh’s claim again on remand, held a hearing and issued a decision. On remand, the Claims Board held that although he was innocent as a matter of law of the crime for which he was convicted, Mr. Turnpaugh’s conduct contributed to his conviction and therefore he was not equitably entitled to receive compensation under the standards of Wis. Stat. §775.05. *See, Turnpaugh v. Claims Board*, Milwaukee County Circuit Court Case No. 13-CV-789, June 12, 2013. Mr. Turnpaugh then appealed this decision under chapter 227 and, on appeal the circuit court found that “it was unreasonable for the Claims Board to find that in this case the Defendant’s conduct contributed to his own conviction” under the standards of Wis. Stat. §775.05(4). *Id.* Accordingly, the circuit court remanded the matter again back to the Claims Board to determine “how much money would equitably compensate the petitioner for his wrongful conviction and attorney’s fees.” *Id.*

DISCUSSION

In light of the above history the Claims Board’s authority and discretion in this case on remand is extremely limited. Moreover, it is important to underscore that the Claims Board’s current decision and monetary award is strictly based on the facts as presented in this matter, and the specific court decisions bearing on this case. Accordingly, the Claims Board’s obligations in this case are narrow and clear. It must make a monetary award under Wis. Stat. §775.05(4). The statute states, in relevant part, as follows:

the claims board shall find the amount which will equitably compensate the petitioner, not to exceed \$25,000 and at a rate of compensation not greater than \$5,000 per year for the imprisonment. Compensation awarded by the claims board shall

include any amount to which the board finds the petitioner is entitled for attorney fees, costs and disbursements.

1. **Equitable Compensation for The Term of Imprisonment**

The statute requires compensation at a rate not greater than \$5,000 per year for imprisonment. The facts and record of this case are clear. Mr. Turnpaugh spent three days in custody and 57 days on electronic monitoring. *See Claimant Letter of Attorney Nelson* dated August 28, 2013, page 2.

Given that the law clearly requires compensation at a rate “not greater than \$5,000” per year, the Claims Board believes it is reasonable and rational to equitably compensate Mr. Turnpaugh on a pro rata basis for every day of imprisonment. Because the legislature has set a maximum annual cap of \$5,000 per year for compensation, the legislature has clearly given the Claims Board the authority to award lesser amounts per year, and therefore lesser amounts for imprisonments lasting less than one year. In addition, the Claims Board has a history of issuing awards on a pro rata basis. *See, e.g., Claim of Aaron Ben Woods (March 22, 1982), Claim of Carlton Pugh (March 22, 1982), and Claim of Leonard Proite (October 17, 1983)*. Therefore, in view of the statute and the Claims Board’s precedent, we conclude that Mr. Turnpaugh’s award will be based on a mathematical pro rata distribution. \$5,000 divided by 365 days equals \$13.70 per day. \$13.70 times 60 days of imprisonment equals \$822.00.

Under certain circumstances, and because there is no minimum compensation requirement, this pro rata rate could be decreased based on the equities. For example, confinement to electronic monitoring seems to be significantly less of a deprivation of liberty than actually being confined to jail or prison. However, given the long history of this case, the Claims Board has determined that no such discounting is appropriate here.

Mr. Turnpaugh argues that he should receive \$10,000 in total compensation because his imprisonment related to two convictions. This is the first time that Mr. Turnpaugh has raised this particular argument; it did not appear in his original claim or in his prior argument on remand.

Mr. Turnpaugh argues that because his original sentence was based on two convictions (one for prostitution and one for bail jumping), he is entitled to the maximum amount of \$5,000 for both counts based on a single term of imprisonment.

However, we find that this argument belies the plain language of the statute. The statute provides for compensation of “\$5,000 per year for **the** imprisonment” (emphasis added). Specifically, the statute contemplates compensation for “**the**,” singular, imprisonment. There is

nothing in the statute that allows for multiple annual awards in excess of the \$5,000 annual cap for a single imprisonment term based on multiple counts or charges. The most recent circuit court decision also supports this interpretation, given that the circuit court ordered the Claims Board, on remand, to determine an award to equitably compensate Mr. Turnpaugh for “his wrongful conviction.” *See, Turnpaugh v. Claims Board*, Slip Opinion Case No. 13-CV-789 Milwaukee County Circuit Court June 12, 2013. Because the circuit court decision uses the singular of the word “conviction,” and because Mr. Turnpaugh was imprisoned for a total of 60 days in relation to both counts, which made up his conviction, his award of compensation is for the conviction or imprisonment, not for each count on which he was convicted. In the same criminal proceeding, he received a sentence of 6 months imprisonment stayed, and was placed on probation for 6 months. The Claims Board finds that it is reasonable and rational to interpret the plain language of the statute as applying to only the single 60-day imprisonment. Despite the fact the Mr. Turnpaugh was convicted on two counts, the facts show that he was imprisoned only once, not twice. Therefore, based on the plain language of the statute, the court order, the potential untimeliness of this argument, and the equities, the Claims Board finds that Mr. Turnpaugh is not entitled to recover twice under the statute for his single 60-day term of imprisonment.

Finally, we would note that Mr. Turnpaugh makes passing reference to the fact that he served 12 months on probation. However, Mr. Turnpaugh did not present any argument as to why probation is the equivalent to imprisonment under the statute. The Claims Board believes that the claimant does have a minimum responsibility to at least explain a theory of recovery and carry some burden of going forward. However, there are no legal citations in his claim nor facts on the record to explain why the Claims Board should extend the term “imprisonment” to cover a period of probation. Moreover, existing law appears to run against the notion that probation is the automatic equivalent of imprisonment. *See, e.g., State v. Eckola*, 2001 WI App 295, 249 Wis. 2d 276, 638 N.W.2d 903. In the absence of any development of this argument, the Claims Board declines to equate imprisonment to probation. Even if such an argument had merit, the Claims Board also concludes that the equities support our decision to give compensation based solely on the 60 days of imprisonment, which was the time Mr. Turnpaugh spent in jail and on electronic monitoring.

Based on the above calculations and reasoning, the Claims Board awards Mr. Turnpaugh \$822.00 as an award for his wrongful conviction for his 60 days of imprisonment.

2. Attorney’s Fees

In his current claim on remand filed August 29, 2013, Mr. Turnpaugh requested \$36,025.89 in attorney’s fees.

Based on the totality of the circumstances of this case, and the unique procedural and litigation history of this case that presented legal questions and issues of first impression to the court, the Claims Board agrees that the claimant is entitled to and shall be awarded the full amount of attorney’s fees, costs and disbursements requested in the amount of \$36,025.89.

The Claims Board believes it is important to underscore the full award of the requested fees, costs and disbursements in this case is based on the specific and unique record of this case. The Claims Board is very mindful of the precedent such an award could set, and cautions that the Claims Board is not generally inclined to award the full amount of such requested fees for future cases. However, the Claims Board is aware of the significant litigation history unique to this case and the issues raised herein. That history and the balancing of the equities surrounding such history are the basis for this award. Such facts, history and equities are unlikely to exist in future cases.

CONCLUSION

In conclusion, the Claims Board awards Mr. Turnpaugh \$822.00 as an award for his wrongful conviction for his 60 days of imprisonment, and \$36,025.89 for his attorney’s fees costs and disbursements, for a total of \$36,847.89.

Dated at Madison, Wisconsin this 25th day of November, 2013.

GREGORY D. MURRAY
 Secretary, Representative of the Secretary of Administration
BRIAN HAGEDORN
 Representative of the Governor
JOSEPH LEIBHAM
 Senate Finance Committee
PATRICIA STRACHOTA
 Assembly Finance Committee

Pursuant to Wis. Stats. 13.172 (2) and (3), attached is the list of agency reports received from executive branch and legislative service agencies for the month of November, 2013.

Board on Aging and Long Term Care
2011-2013 Biennial Report
 Pursuant to 16.009 (2)(i), Wis. Stats.
 Received on October 15, 2013.

Department of Administration – Division of Intergovernmental Relations
Wisconsin Office of Federal/State Relations Quarterly Report
 Pursuant to 16.548, Wis. Stats.
 Received on November 20, 2013.

Gathering Waters Conservancy

FY 2013 Report of Activities

Pursuant to 23.0955 (2)(b)5, Wis. Stats.

Received on November 1, 2013.

Government Accountability Board

Lobbyist Update through 11/5/2013

Pursuant to 13.685 (7), Wis. Stats.

Received on November 11, 2013.

Department of Natural Resources

Properties Purchased with Funds from the Knowles-Nelson Stewardship Program

Pursuant to 23.0916 (6), Wis. Stats.

Received on November 19, 2013.

Referred to the joint committee on **Finance**.

Health Insurance Risk-Sharing Plan Authority

2012 Annual Report

Pursuant to 149.43 (6), Wis. Stats.

Received on November 15, 2013.

Department of Natural Resources

2013-2015 Land Acquisition Estimates

Pursuant to 23.0913, Wis. Stats.

Received on November 15, 2013.

Referred to the joint committee on **Finance**.

WHA Information Center

2010-2012 Wisconsin Inpatient Hospital Quality Indicators Report

Pursuant 153.22, Wis. Stats.

Received on November 14, 2013.

Legislative Audit Bureau

Review of Level of Commitment for University of Wisconsin System Program Revenue Balances

Pursuant to 13.94 (t), Wis. Stats.

Received on November 15, 2013.

Department of Revenue

Wisconsin Lottery Quarterly Report

Pursuant to 565.37 (3), Wis. Stats.

Received on November 19, 2013.

Government Accountability Board

Lobbyist Update through 11/20/2013

Pursuant to 13.685 (7), Wis. Stats.

Received on November 20, 2013.

Wisconsin Technical College System

2011-2013 Biennial Report

Pursuant to 15.04 (1)(d), Wis. Stats.

Received on November 20, 2013.

University of Wisconsin System

2013 Legislated Accountability Report

Pursuant to 35.65, Wis. Stats. And 2011 WI Act 32

Received on November 21, 2013.

Office of the State Treasurer

2011-2013 Biennial Report

Pursuant to 15.04 (1)(d), Wis. Stats.

Received on November 21, 2013

***Motions Under Senate Rule 98 and Joint Rule 7
for the Month of November 2013***

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Vukmir, for ANEW Health Care Services, on the occasion of 30 years of outstanding service to the Milwaukee area.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Lazich, for Walter Bohrer and Hastings Air Energy Control, Incorporated, on the occasion of the company's expanded and improved Experience Technology Center as well as the company's commitment to service, community, and economic growth.

A certificate of commendations by the Wisconsin Senate on the motion of Senator Moulton, for the Stanley-Boyd Football team, on the occasion of being state champions in the 2013 WIAA Division V State Football Tournament and on a successful season.

A certificate of commendations by the Wisconsin Legislature on the motion of Senator Harsdorf, for Nicholas Bradish, on the occasion of earning and attaining the rank of the Eagle Scout Award.

A certificate of commendations by the Wisconsin Senate on the motion of Senator Risser, for Stuart Fass, on the occasion of earning and attaining the rank of the Eagle Scout Award.

A certificate of commendations by the Wisconsin Senate on the motion of Senator Gudex, for Jet Stream Car Wash, on the occasion of their 50 years of service and wish them the best on their future endeavors .

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Vukmir, for Joseph McGrath, on the occasion of earning and attaining the rank of the Eagle Scout Award.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Vukmir, for Our Redeemer Lutheran School, on the occasion of being named a National Blue Ribbon School.

A certificate of commendations by the Wisconsin Senate the motion of Senator Moulton, for the Eau Claire Regis High School Girls Volleyball team, on the occasion of a successful season and finishing as State Champions in the 2013 WIAA Division III State Girls Volleyball Tournament.

A certificate of congratulations by the Wisconsin Legislature on the motion of Senator Fitzgerald, for Benjamin R. Vander Grinten, on the occasion of earning and attaining the rank of the Eagle Scout Award.