

## Winston Pro Bono Team Overturns Client's Death Penalty

APRIL 19, 2017

A New York-based Winston & Strawn pro bono team obtained a significant victory in the United States Sixth Circuit Court of Appeals on behalf of a Tennessee death row inmate seeking habeas corpus relief. Overruling an earlier federal district court decision, the panel granted our client, Andrew Thomas, relief on his state habeas petition, resulting in his death sentence being reversed.

The firm has represented Mr. Thomas since 2006 in connection with two related state and federal habeas petitions pending before the United States District Court for the Western District of Tennessee. The petitions arose from Mr. Thomas's conviction on both federal and state charges for the same incident.

In 1997, an armored car guard was shot during the course of an armed robbery in Memphis, Tennessee. The shooter then fled the scene with a getaway driver and the guard was initially treated and released. Following an investigation by a joint state and federal task force, the U.S. Attorney prosecuted Mr. Thomas as the shooter under federal criminal statutes. He was convicted of armed robbery and sentenced to life imprisonment.

Two years later, the wounded guard died from an infection. On the theory that the infection was a result of the shooting, the Shelby County District Attorney prosecuted Mr. Thomas for first degree felony murder under Tennessee law. In 2001, he was convicted and sentenced to death. Mr. Thomas unsuccessfully appealed both of these convictions on direct appeal, and thereafter exhausted his post-conviction remedies under Tennessee law. In 2006, Winston took on the case and submitted federal habeas petitions on behalf of Mr. Thomas challenging both the state and federal convictions.

During an evidentiary hearing in 2011—nearly 10 years after the state trial—Winston attorneys developed evidence during examination that the joint federal and state task force that investigated the shooting secretly paid Mr. Thomas's ex-wife \$750 after her testimony against him at the federal trial. The district attorney failed to disclose this fact to defense counsel following the federal trial or in the subsequent state trial, which was an especially critical omission given that his ex-wife was "the pivotal witness in both trials." Seizing on the significance of this newly discovered evidence, Winston amended Mr. Thomas's state habeas petition to include a *Brady* claim that this evidence was improperly withheld. The habeas petitions also raised several other claims, including that the state prosecutor elicited false testimony from our client's ex-wife and ineffective assistance of counsel. Despite this new evidence, in 2015 the federal district court denied both the amended state and federal habeas petitions.

Following briefing, a Winston partner and local Memphis co-counsel argued on behalf of Mr. Thomas. The Sixth Circuit panel reversed and remanded the district court’s denial of habeas relief in the state death penalty case. The panel found that “the prosecutor had a duty to disclose this payment rather than allow the witness to commit perjury by denying its existence” and that failing to disclose this evidence was “particularly egregious.” The panel affirmed the district court’s denial of habeas relief from the federal conviction, on the basis that the \$750 payment was made after the federal trial. In addition to being a life-changing victory for Mr. Thomas by vacating his death sentence, the panel’s opinion on the state habeas petition also represents important legal precedent in the Sixth Circuit on the issue of *Brady* violations. On April 19, 2017, the Sixth Circuit denied a petition for re-hearing en banc.

In addition to Kevin, Winston’s appellate team included Associate Elizabeth Cate and Practice Attorney Lane Lerner. Other individuals from the New York office and throughout the firm also played an important role in aggressively defending the client and laying the foundation for this tremendous success. These attorneys include Partners Kim Morris and Linda Coberly and Associates Jerry Chen, Erick Rivero, Lilli Scalettar, and Thomas Weber.

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