

Abuse
OF
Justice



Frank Wilkinson

www.justiceforfrankwilkinson.co.uk

FRANK WILKINSON LET HIM OUT!

8,616 days and counting

Today (Saturday October 10th 2009) is Frank Wilkinson's 8,616th day in prison as an innocent man. Over 23 years ago, Frank was found guilty by majority verdict of the murder of Alan Raffle. The evidence presented at his trial was entirely circumstantial. Forensic evidence proved only that he had been in recent physical contact with Raffle - a friend with whom he had worked regularly. There was no evidence of blood, no evidence that he had ever been in the car that allegedly took Raffle to his death, no evidence that he had any motive for such a murder. The police investigation was slipshod. Evidence that might have pointed in another direction was ignored or "lost". Questionable use was made of Frank's co-accused, a man whose behaviour at trial was damning to Frank and who was himself acquitted at that trial and yet who, in March 1988 - just a month after Frank's first appeal failed - wrote a full confession, currently in the hands of the Criminal Cases Review Commission.

Maintaining innocence and over tariff

Frank was given a life sentence with a recommended tariff of 20 years. He has always maintained his innocence, despite the fact that to admit guilt would have undoubtedly made life much easier for him and could well have earned him freedom years ago. Our criminal justice system seems unable to cater for prisoners like Frank. After 23 years in prison (during which time he has gained a BA in Fine Arts, an MA in Art and Design and a PhD in English Language and Literature), he was only downgraded from Category A this summer in a decision that had to be forced out of the Prison Service in the courts. He has now served 3 years beyond his original sentence - he is "over tariff". Although once a career criminal, ironically his wrongful imprisonment has remade him. He is now completely and obviously rehabilitated. He is a model prisoner who consistently gets good reports. So why hasn't he been released?

The sentence planning system - how do you get out of jail?

The Prison Service, the Probation Service, the Ministry of Justice - all base their risk management approach on the fact of a prisoner's guilt. They say they cannot "go behind" the judicial process that convicted a prisoner in the first place. Prisoners who maintain that they are innocent are therefore regarded as being "in denial" of their guilt and considered high risk as a result.

Offending behaviour courses

In the current system, it is up to prisoners to demonstrate that they have "addressed" their "offending behaviour" by participating in a number of offending behaviour courses. These are designed to challenge such behaviour and so bring about a change in attitude. An important aspect of many of these courses is that a prisoner should acknowledge his "index offence" - the crime for which he is in prison - and so come to terms with the behaviour behind it. It is by going through this process that a prisoner demonstrates that the risk he presents to society has been reduced sufficiently to warrant release.

Punished for being innocent

Prisoners who maintain their innocence are handicapped in this system because the process does not really accept that there can be an innocent prisoner. Many prisoners who maintain innocence find themselves in a vicious circle in which they cannot make progress since they cannot demonstrate reduced risk. The inevitable logic of the system dictates that, if you say you are innocent, you are less likely to make progress than a prisoner who accepts guilt, and more likely to serve over your tariff than that prisoner.

It was recently revealed that there are currently well over 3,000 prisoners in our prisons who are over tariff - over 1,000 of these are more than 10 years over tariff. Although it has so far proved impossible to find out how many of these prisoners are maintaining innocence, the experience of Frank, and other prisoners like him, suggests a strong link between maintaining innocence and being over tariff. It is time for all concerned to rethink the current approach to such prisoners.

The appeal system – how do you prove you didn't do it?

The official line is that there is a clear avenue open to prisoners like Frank to appeal their conviction, prove their innocence and so gain release - they apply for leave to appeal to the Court of Appeal and, if this fails or is refused, to the Criminal Cases Review Commission to have their case reviewed in the hope that the Commission will refer it back to the Court of Appeal. There are several problems with the official line, however.

The Court of Appeal

This is the first stop for a prisoner who wishes to have a conviction overturned. A recent study of the efficacy of the Court of Appeal showed that, of the 71,000 cases that were dealt with by the Crown Court in a year, 2,000 resulted in applications being made for leave to appeal and 150 convictions were eventually overturned. These figures invite us to accept that the system is getting it right 99.8 per cent of the time. This seems an unrealistically high level of performance.

The Criminal Cases Review Commission

Having failed to overturn a conviction at the Court of Appeal, the next, and final, stop is the CCRC. Their job is to review convictions and, if they see fit, to refer cases back to the Court of Appeal. However, under the 1995 Criminal Appeal Act, this job consists of testing whether convictions were obtained in strict accordance with the rules and procedures of the system or whether there are fresh arguments or fresh evidence unavailable at the original trial. Many miscarriages of justice will simply be the result of an inept defence or a biased judge or "creative" police evidence or a rogue jury, and so will not qualify for referral. On top of this, the CCRC does not apply a test of guilt or innocence, but tries to judge whether a case has a "real possibility" of being overturned - in effect, it attempts to "second guess" the Court of Appeal in coming to any decision. Furthermore, over 50% of applicants to the CCRC are not legally represented, yet not a single unrepresented applicant has had their case referred back to the Court of Appeal.

Since 1997, the CCRC has reviewed more than 11,600 cases, only 385 of which it has referred back to the Court of Appeal. As of March 2009, 273 convictions had been quashed as a result. In the vast majority of cases, the CCRC forms the view that there is not a real possibility of having a conviction overturned or a sentence reduced. This is perhaps unsurprising given the narrow terms of reference under which it operates.

Time to rethink

We are rightly upset when our criminal justice system gets it wrong and lets the guilty off or releases dangerous prisoners who then re-offend. We should be equally upset when the system convicts the innocent and then compounds its mistake - first by failing to provide adequate access to a reconsideration of the original verdict, and second by instituting a sentence planning system that makes it more likely that innocent prisoners will serve longer terms in prison than their guilty counterparts.

Frank's case has recently been accepted for review by the CCRC but the review process does not move quickly. As Richard Foster, the chair of the Criminal Cases Review Commission has recently said:

"You have always got to pause if someone continues to say they're innocent, either when they're in prison or, more pointedly, if they're in prison and ruling themselves out of early release because they're not acknowledging their guilt. I think any sensible person is going to pause on that and say - well, why?"

It is time for our criminal justice system to pause - and to rethink its approach to Frank, and to other prisoners like him. Frank is coming up to his 63rd birthday. It is time to let him out.