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Ex-prosecutor punished in Texas case

Ken Anderson will serve 9 days in jail and surrender his law license for withholding evidence

BY MOLLY HENNESSY-FISKE

HOUSTON—A former Texas judge and prosecutor agreed to serve nine days in jail and surrender his law license Friday for withholding evidence in his prosecution of a man who was exonerated in 2011 after serving 25 years in prison for his wife's murder.

The hearing took place at the same courthouse north of Austin where Ken Anderson once heard cases as a district court judge.

Anderson agreed not to contest a judge's criminal contempt order after he was arrested in April on a felony charge of tampering with evidence, a misdemeanor charge of tampering with a government record, and the contempt finding that as a prosecutor he lied to a judge during a pretrial hearing for Michael Morton, who was eventually convicted and sentenced to life in prison.

"This is a big day for a lot of reasons. We have never heard of any prosecutor being punished for deliberately refusing to turn over exculpatory evidence," said Barry Scheck, one of Morton's attorneys and a founder of the Innocence Project in New York.

Prosecutors are granted immunity and rarely prosecuted for alleged misconduct, including withholding exculpatory evidence favorable to the defense.



Michael Morton—innocent victim of prosecutorial misconduct in Texas.

The case against Anderson was spearheaded by attorneys for Morton, who was freed after DNA tests implicated another man in the murder of Morton's wife, Christine, who was found beaten to death in the bedroom of their Williamson County home in 1986. Mark Norwood was convicted of the murder in March and received a life sentence.

Morton was in court Friday and celebrated after the hearing. "I said the only thing that I want, as a baseline, is Ken Anderson to be off the bench and no longer practicing law -- and both of those things have happened, and more," Morton said.

As part of Friday's agreement, the judge dismissed the two charges against Anderson, who agreed to complete 500 hours of community service and pay a \$500 fine. He was ordered to surrender by Dec. 2.

Anderson, the district attorney for 16 years in Williamson County before he became a judge in 2002, surrendered his law license to settle a related civil suit filed by the State Bar of Texas, accusing him of professional misconduct.

His attorney said after the hearing that Anderson had no comment.

Morton's attorneys, including a team from the Innocence Project, argued that Anderson withheld two key pieces of evidence during Morton's trial: first, a police interview with Morton's mother-in-law, who said his 3-year-old son witnessed the murder and said his father was not home during the killing; and second, a police report saying the driver of a green van had parked and walked behind the Morton house before the murder.

Under a unique Texas law, a "court of inquiry" into Anderson's handling of the case was convened before a Fort Worth judge in February for five days of testimony from witnesses including Anderson, Morton, lawyers from both sides and the jury foreman.

Two months later, the judge found probable cause that Anderson violated two anti-tampering laws by intentionally hiding the evidence, and that he committed criminal contempt of court by lying to Morton's trial judge.

Scheck said Williamson County Dist. Atty. Jana Duty agreed to an independent audit of cases Anderson handled as district attorney, as well as some cases handled by his successor, John Bradley, in which Bradley refused requests for post-conviction DNA testing (as he did in the Morton case). The audit will be conducted by the Innocence Project, the Innocence Project of Texas and the Texas Criminal Defense Lawyers Assn.

Morton's attorneys said they expected the impact of Anderson's case and the audit to be far-reaching.

"Today's historic precedent demonstrates that when a judge orders a prosecutor to look in his file and disclose exculpatory evidence, deliberate failure to do so is punishable by contempt," Scheck said.

"Every state and federal judge can issue such an order tomorrow and deter those few prosecutors who would otherwise deliberately violate their ethical and legal duties."

Others who represent the wrongfully convicted cheered Anderson's agreement.

"This agreement is going to focus the attention of Texas prosecutors without question," said Kathryn Kase, executive director of Texas Defender Service, a nonprofit that trains and assists lawyers who represent death row inmates. "If prosecutors have taken any one message away from that focus, it is that the public is unwilling to support a justice system where the innocent don't get a fair shake in the courtroom."

Friday's outcome was not a surprise to Texas prosecutors, many of whom followed the Morton case and have since worked to improve the state's judicial system, said Robert Kepple, executive director of the Texas District & County Attorneys Assn.

Kepple noted that Texas prosecutors worked with state lawmakers to help pass the Michael Morton Act, designed to ensure that prosecutors share evidence with defense attorneys and prevent wrongful convictions. (Morton was keynote speaker at the group's annual conference in September.)

Kepple expressed concern, however, that prosecutors' immunity remain intact, calling it "essential."

"I can't see how the closing of this final chapter of the Morton/Anderson saga changes that," he said. "If anything, it militates against touching immunity. Anderson is being punished in a number of ways, and if the Innocence Project people are right, his case will serve as a lesson to prosecutors in the future."