

An important message from Julie Biehl, Director of the Children and Family Justice Center:



Day in and day out, much of the work of our staff and our students is sometimes heartwarming and other times heartbreaking.

Today, we bring you **Anthony Gay's** story, which combines the extremes of both emotions. We're not sharing this story to toy with your emotions. It's an important case that exemplifies the dedication and commitment of our staff and how gratifying this work can be.

HEARTBREAKING

Anthony Gay's experience in the justice system has been heartbreaking. In the Quad Cities at the age of 17, Anthony and some friends beat up a man who had insulted Anthony's sister – an immature act that was the beginning of his descent into solitary confinement inside the Illinois prison system and resulted in the most inhumane treatment meted out by the state.

Suicidal and injuring himself through frequent acts of horrific self-mutilation, Anthony Gay was losing his mind. Treatment for his mental disorders was uneven, and his mental condition fueled actions against guards that resulted in more time in solitary confinement and new criminal charges – enough to expand his prison sentence from the original seven years to 108 years.

In short, Anthony Gay was growing up and destined to grow old and die after enduring a lifetime of torture inside a small prison cell.

HEARTWARMING

The heartwarming part of the story began when our very own **Scott Main** entered his life. At the time, Scott was on the staff of the Office of the State Appellate Defender (OSAD), and Anthony was spending some of his days writing his own court appeals. Near the end of 2010, 16 boxes of Anthony's appeals and correspondence arrived in Scott's OSAD office and, Scott began pouring through the papers in search of a way to gain freedom – and peace of mind – for Anthony.



Anthony couldn't have known it at the time, but that was his lucky day. Scott dedicated himself to Anthony's cause. When Scott left OSAD to join CFJC in 2012, Scott could have dropped out of Anthony's life and never looked back. But Scott refused to let the injustice stand. At CFJC, Scott worked with CFJC attorney **Alison Flaum** and **Jennifer Soble**, who then was an attorney with the Bluhm Legal Clinic and now works at the Justice Collaborative on Anthony's behalf.

They succeeded in reducing Anthony's unfair sentence of 108 years to 24, but CFJC didn't stop there. Recognizing that his transition to freedom also would be difficult, CFJC'S Social Work Supervisor **Marjorie Moss** and her students got involved a year before his release and helped Anthony prepare for his return to his family.

Anthony is a free man today. His mental health is improving, and he is getting help to adjust to life outside prison. We asked Scott to explain the fight for Anthony's freedom.

Julie Biehl

Q. In 1994, Anthony Gay entered IDOC expecting to be there three years. Many years later, he was still in IDOC and sometimes in solitary confinement. When did you first come in contact with him and his appeal?



Scott Main

MAIN: It was 2010, and I was an assistant appellate defender working for the Office of the State Appellate Defender in Chicago. All of Anthony's appeals that I was involved in were based on things that he had written himself and had filed in the Livingston County circuit court. I basically spent all of 2011 and part of 2012 working on behalf of one client, which is very different from the usual OSAD model. We were expected to represent many clients, but just by the virtue of the volume of cases and the nature of

how we were trying to raise claims on his behalf, I spent a lot of time really digging into his case. We were trying to figure out how to take what Anthony had written and turn it into an argument that might be persuasive in light of some recent Supreme Court cases. My first phone call with Anthony would have been in January of 2011. I've been in frequent communication with him ever since.

Q. At that point, where was he?

MAIN: Tamms. He went into prison in 1994 and should have served 3-1/2 years. He lost all of the good time that he would have been entitled to accrue, and so his 3-1/2 years went to seven years. I can't make diagnoses of what his mental state was but the notion of decompensation becomes evident in terms of what started happening while he was there. That's where the self-mutilation began and escalated.

Q. Take a moment to explain what's different about Tamms.

MAIN: Most people in prison have contact with other prisoners, and at least some out-of-cell time. Tamms was a "supermax" prison, which means it was designed for sensory deprivation. People in Tamms were always in solitary confinement, and essentially never left their cell. The main reason someone would leave the cell was

to go exercise alone in an exercise pen. All the meals were pushed through the cell in a chuckhole. They could yell to each other in the pods, but people were not able to have face-to-face contact, and really never saw each other unless someone walked by their cell.

Q. No television, no books. How about a window?

MAIN: There was a window slit, but you couldn't look out the window directly unless you stood on your bed and looked up. The windows were designed so you really couldn't see the sky. The cells were pretty barren, and Anthony would have had severe property restrictions, with very limited books and photos.

Q. Explain the theory behind Tamms.

MAIN: Supermax prisons emerged in the extremely punitive turn of the 1990s, and they were built in almost every state. In Illinois, Tamms was originally described as a place to take disruptive people out of the system for one year. But like Anthony, they put people there and left them. Tamms was essentially a place where wardens could "disappear" the people they didn't want to deal with, including those with mental health problems.

For people from the Chicago area, this prison was the farthest point away from their family in the state, a 7- to 8-hour drive.

Some people there had been put in segregation in a regular prison, and some were placed in a "preventative detention" status because of their gang affiliation. But it was never clear why some people got sent there, and there was no recourse to get yourself out once you were there.

Q. But Anthony Gay was allowed to talk to you and to write appeals?

MAIN: Yes, they can't cut off access to the courts. Fighting for himself in court was Anthony's way to demonstrate his dignity and be recognized as a human being. When he would file something, at least that had to be responded to by the outside world. It had to be engaged with in a serious way – by the judges, by the opposing party, by the prosecutor.

I've never had a client as litigious as Anthony, and I still am not able to tell you how many lawsuits he filed while he was serving time. It would be a very long list.

Q. Did any of his appeals make the arguments you used successfully to win his release?

MAIN: No.

Q. Explain what happened to extend his short sentence to one that was the equivalent of life in prison.

MAIN: Because of increasing mental health concerns, Anthony had been transferred from Tamms to the prison in Dixon, where he received better mental health treatment. Because his condition improved, IDOC moved him from Dixon to the maximum-security prison in Pontiac where his condition deteriorated again. When he disobeyed the rules or acted up against guards, he would be given a "ticket" with punishment of solitary or loss of privileges. But the Livingston County State's Attorney also began filing new charges against Anthony in connection with those incidents.

Based on 10 months he spent at Pontiac, the prosecutor brought 16 criminal charges. Those cases increased his sentence from 11 years to 108 years. The first of those incidents happened in July 2000, but he wasn't charged with anything for several months. Meanwhile, 10 more incidents occurred between July and December.

Traditionally, his conduct would have been handled by discipline inside the prison, and that would have been the end of it. He didn't know officials were stockpiling these incidents and then referring them for prosecution to the Livingston County prosecutor. These incidents happened in 2000 and 2001. I didn't meet him until 2011.

Q. About two years later you left OSAD and joined CFJC. How did you come to continue working for his release?

MAIN: Within a year, he had written to **Tom Geraghty** (then Director of the Bluhm Legal Clinic) asking for help. Tom referred the letter to **Jennifer Soble**, who started

looking into his case and realized I had been working on his appeals. She agreed to take on his case and I was happy to help.

Our initial strategy was to become a bit of a thorn in the side of the Livingston County prosecutor, to basically say "we're not going to go away. We don't think this is right, and we don't think you should just punish obvious manifestations of mental illness. This can't be the only solution that the state just let this person die in prison."

Q. And a reading of the state's sentencing statutes led you to an argument that the Livingston County sentences should be served concurrently instead of consecutively. Explain that, please.

MAIN: Yes. If I'm convicted of seven things, the law says all of those seven things should be served at the same time. The law presumes that all sentences should run concurrently with each other.

The only time you can stack sentences is when the law specifically says it is an option or specifically requires the sentences to be served consecutively. But in the absence of some specific provision permitting sentences to run consecutively, the law says they should run concurrent.

However, one of those very clear ways the law requires sentences to be consecutive is when someone is charged for a crime while incarcerated or on parole.

Q. Anthony Gay was charged for an act while incarcerated. Wouldn't that argue for the sentences to be consecutive?

MAIN: If I'm in the Department of Corrections and I pick up a new criminal offense, the law is pretty clear that the new criminal offense should be served consecutive to whatever I'm currently serving. It does not say that each new charge in prison must be consecutive to each other.

Q. But the Livingston County State's Attorney had filed cases one-by-one and supported consecutive sentences, right?

MAIN: There was gamesmanship happening. The prosecutor was trying to get Anthony to plead out on various cases, and one of the ways to try to get him to plead

out was to tell him, in effect, “take this plea or else I’ve got 15 other cases I can charge you on.” So, the state was using these other cases as a hammer to try to get a plea and then would wait another six months and use the same hammer.

There are so many different tragedies in this case. Throwing urine and feces on guards is not ok, but it then got into these standoffs where the state was using that leverage and adding 97 years to his sentence. It didn’t make any good sense. It didn’t change his behavior.

Q. No judge intervened?

MAIN: I know that Anthony, at times, wasn’t being reasonable. The state wasn’t being reasonable. The judge wasn’t being reasonable. No one was stepping back and saying: “How can we stop this? This no longer is making any sense, and it certainly isn’t making anyone in the State of Illinois any safer.”

Q. Anthony was in prison a long time, and there were changes in prosecutors and judges. Did that make a difference?

MAIN: Yes. When a new prosecutor came into office, one of the things he talked about was why Livingston County was different from the other counties in Illinois that house maximum-security facilities. Livingston County prosecuted more cases for incidents in prison than any other county around the state.

My understanding was that this new prosecutor did not think that was a good use of his office’s resources. Obviously, if there were an incident with an injury, if there was something serious that happened, without question they were going to proceed. I sensed he would have a different perspective on these incidents with Anthony Gay.

Q. And?

MAIN: We contacted his office and asked that they take a look at the consecutive sentences statute and the consecutive sentences given to Anthony. The state’s attorney agreed in principle, and we had to reach an agreement on how to change the sentences.

We eventually filed a joint motion asking for some to be served concurrently and

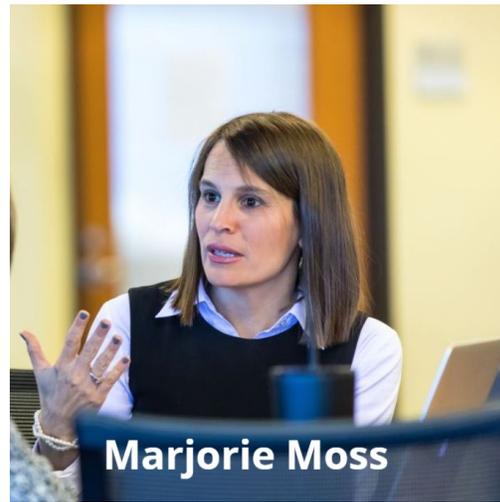
some consecutively. The judge agreed to the motion, and Anthony's cumulative term of 108 years came down to 24 years. That was in 2014. Anthony served all 24 years and was allowed to come home in August of last year.

Q. How much of your life was devoted to this case between 2011 and 2014?

MAIN: I spent all of 2011 and part of 2012. My work on his behalf here at Northwestern was significantly less, but many months went by before we finally reached the agreement with the prosecutor.

Q. Did you have much contact with Anthony between his sentence reduction in 2014 and his release in 2018?

MAIN: Yes, just by virtue of our mission at CFJC, we approach things in a more holistic manner. I knew that his impending release meant he was going to have many needs to help him adjust and succeed outside prison. Over a year before his actual out-date, **Marjorie Moss**, CFJC'S Social Work Supervisor, got involved in this case and assigned social work students to set up weekly calls to prepare him for reentry.



Q. Tell me about his first day of freedom.

MAIN: His sister picked him up in a U-Haul van. All of the files he had accumulated filled the van and then filled up his dad's garage. I helped move box after box after box into that garage. When I got to the house and got to see Anthony in a button-down shirt and talking on a cell phone, it was a surreal, crazy moment.

Q. Are there more like Anthony Gay in Illinois prisons with same sentencing errors?

MAIN: I haven't yet seen the same specific legal error. But there certainly are others in our prisons whose manifestations of mental illness have caused them to receive extended prison sentences.

Anthony Gay is living with his parents in Rock Island County, learning about life outside prison and receiving counseling to help recovery from the torture he endured in prison. The MacArthur Justice Center, also affiliated with the Bluhm Legal Clinic, and two other law firms are representing Anthony in a federal lawsuit alleging the state of Illinois and others violated the constitutional prohibition against cruel and unusual punishment, as well as violated the Americans with Disabilities Act and the Rehabilitation Act.

NPR's Here & Now radio program recently aired an interview with Anthony. You can hear Anthony talk about his prison experience in the segment on the [Here & Now website](#).

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Children and Family Justice Center | Northwestern Pritzker School of Law
375 East Chicago Avenue | Chicago, IL 60611-3069

312.503.8576 phone
312.503.0953 fax
cfjc@law.northwestern.edu