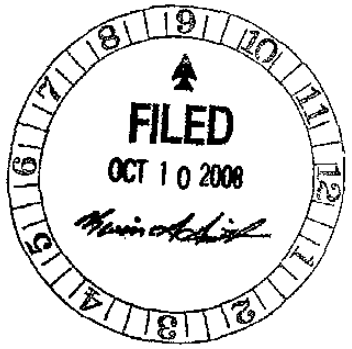

In the
Indiana Supreme Court

IN THE MATTERS OF THE HONORABLE GRANT W. HAWKINS, JUDGE OF THE MARION SUPERIOR COURT, AND THE HONORABLE NANCY L. BROYLES, COMMISSIONER OF THE MARION SUPERIOR COURT	)	Cause No. 49S00-0804-JD-157

ORDER ACCEPTING AGREED DISCIPLINE

On April 9, 2008, the Indiana Commission on Judicial Qualifications ("the Commission") filed a "Notice of the Institution of Formal Proceedings and Statement of Charges" against Commissioner Nancy L. Broyles ("Respondent Broyles") pursuant to Ind. Admission and Discipline Rule 25(VIII)(F). Respondent Broyles elected not to file an Answer. Special masters were appointed by order dated June 18, 2008.

The Commission and Respondent Broyles have tendered a "Statement of Circumstances and Conditional Agreement for Discipline" ("Conditional Agreement") for review by the Court pursuant to Ind. Admission and Discipline Rule 25(VIII)(H). Having reviewed the Conditional Agreement, a majority of the Court ACCEPTS the facts and agreed discipline. A copy of the Statement is attached to and is made a part of this order.

Accordingly, Nancy L. Broyles, who voluntarily retired from her position as Commissioner of the Marion Superior Court in April 2008, is hereby PERMANENTLY BANNED from serving in any judicial capacity of any kind, including service as a judge *pro tempore*. A determination on the assessment of costs shall be held in abeyance pending the outcome of this matter as it pertains to Judge Hawkins. An opinion of the Court will follow in due course, but this order shall be considered dispositive of the case as it pertains to Respondent Broyles.

The Clerk is directed to send copies of this order and attachment to the Hon. Nancy L. Broyles and her counsel, James Voyles; to the Supreme Court Administrator; to the Executive

Director for State Court Administration; to Meg Babcock, Counsel for the Commission on Judicial Qualifications; to the Hon. Marianne L. Vorhees, Delaware Circuit Court; to the Hon. Clarence D. Murray, Lake Superior Court; and to the Hon. Terry C. Shewmaker, Elkhart Circuit Court.

Done at Indianapolis, Indiana, this 10th day of October, 2008.

For the Court:

Randall T. Shepard

Randall T. Shepard
Chief Justice of Indiana

All Justices concur, except for Shepard, C.J., who dissents from the acceptance of the parties' agreed discipline, regarding the sanction as inadequate.

In the
Supreme Court of Indiana

IN THE MATTER OF	)	
	)	
THE HONORABLE	)	
	)	
NANCY L. BROYLES	)	**Cause No. 49S00-0804-JD-157**
	)	
COMMISSIONER OF THE	)	
	)	
MARION SUPERIOR COURT	)	

STATEMENT OF CIRCUMSTANCES

AND

CONDITIONAL AGREEMENT FOR DISCIPLINE

The Indiana Commission on Judicial Qualifications, by counsel and with the Chief Justice and John Trimble not participating, and Ms. Nancy L. Broyles, in person and by counsel, submit their Statement of Circumstances and Conditional Agreement for Discipline, and show the Court as follows:

STIPULATED FACTS

1. On April 9, 2008, the Indiana Commission on Judicial Qualifications filed its Notice of the Institution of Formal Proceedings and Statement of Charges. (Exhibit A).

2. The Charges against former Commissioner Nancy L. Broyles, and the Charges filed concurrently against Judge Grant W. Hawkins, allege delay and dereliction of their duties as the judicial officers responsible for the post-conviction cases in *Buntin v. State*, cause no. CR85028E, *Bailey v. State*, cause no. 49G05-0212-PC-311072, 49G05-0212-PC-306918, 49G05-0301-PC-003842, *Bewley v. State*, cause no. 49G05-9804-PC-064052, *Brown v. State*, cause no. 49G05-9510-PC-149022, *Dunlap v. State*, cause no. 49G05-9801-PC-012097, *Edwards v. State*, cause no. 49G05-9604-PC-061303, *Johnson v. State*, cause no. 49G05-0302-PC-021874, and *Stephens v. State*, cause no. 49G05-9805-PC-076033.

3. Ms. Nancy Broyles elected to not file a permissive Answer to the Statement of Charges.

4. At all times pertinent to the charges, Judge Hawkins was Judge of the Marion Superior Court, Criminal Division 5.

5. At all time pertinent to the charges, Ms. Nancy Broyles was part-time Commissioner of the Marion Superior Court, Criminal Division 5. She voluntarily retired from that position in April 2008.

6. In 2001, Judge Hawkins assigned Commissioner Broyles to manage Court 5's post-conviction cases, and from January 2001 through February 2007, Commissioner Broyles was the judicial officer who primarily reviewed and presided over Court 5's post-conviction cases.

7. From January 2001 through February 2007, Commissioner Broyles issued final orders in post-conviction cases, without obtaining Judge Hawkins' signature or other official notation on the record demonstrating that Judge Hawkins reviewed and approved of the final orders, contrary to IC 33-33-49-16 and IC 33-23-5-8.

8. Harold D. Buntin ("Buntin") was convicted of rape and robbery in 1986 and then began serving a 50-year sentence in the Indiana Department of Corrections in 1994 after his extradition from Florida.

9. Buntin's conviction was affirmed by the Indiana Court of Appeals in 1996.

10. In 1998, Buntin filed a Petition for Post-Conviction Relief in Court 5 based upon DNA evidence not available during his trial and ineffective assistance of trial counsel.

11. Delays between the filing of the PCR and the hearing were not attributable to action by Commissioner Broyles and are not a part of these charges.

12. Commissioner Broyles presided over Buntin's post-conviction hearing on March 16, 2005. The DNA evidence established that Buntin was not the contributor of the seminal fluid collected from a vaginal swab of the rape victim after the crime.

13. After the hearing, Buntin's attorney, Carolyn Rader ("Rader"), and the State each submitted their proposed Findings of Fact and Conclusions of Law, with proposed Orders, to Commissioner Broyles.

14. In Buntin's proposed Findings of Fact and Conclusions of Law, Rader urged Commissioner Broyles to grant Buntin's petition in light of the DNA evidence, arguing that Buntin probably would not be convicted if he were retried. Rader requested a new trial for Buntin or other just relief.

15. In the State's Proposed Findings of Fact and Conclusions of Law, the State argued that the other evidence against Buntin was sufficient to sustain the convictions, despite the DNA evidence.

16. As of April 18, 2005, both parties had submitted their respective proposed Findings of Facts and Conclusions of Law on Buntin's Petition for Post-Conviction Relief, and Commissioner Broyles' decision was under advisement.

17. In January 2007, Buntin filed a complaint with the Indiana Commission on Judicial Qualifications ("Commission") alleging that his post-conviction case before Commissioner Broyles had been pending for nearly twenty-two months and that Carolyn Rader had not communicated with him since 2005.

18. Commission counsel, Meg Babcock, contacted Judge Hawkins the first week in March 2007 about the complaint, and Judge Hawkins communicated that the *Buntin* file could not be located but that court staff was looking for the file.

19. By March 7, 2007, the *Buntin* file had been located.

20. In March 2007, Judge Hawkins reviewed the *Buntin* file and reported he found, in the front of the file, a signed PCR Order, dated May 20, 2005, that apparently had not been processed by the court staff and/or the deputy clerk.

21. On March 8, 2007, Commissioner Broyles issued an Order dated May 20, 2005 granting Buntin's petition for post-conviction relief, but made the order effective March 8, 2007, which was nearly twenty-two months after the matter had been taken under advisement. (Exhibit B).

22. From March 2007 until January 2008, Commissioner Broyles represented that she believed she signed the *Buntin* PCR Order on May 20, 2005. She formed this belief by relying on the date printed on the Order. She did indicate under oath that she had no independent memory of signing the *Buntin* PCR Order.

23. There was no evidence of a 2005 PCR Order in *Buntin* on Commissioner Broyles' office word processing equipment, nor was Commissioner Broyles able to produce evidence of an Order prepared outside the office.

24. Carolyn Rader reported that, in August 2005, Commissioner Broyles told Rader that she intended to work on the *Buntin* case and asked Rader for a diskette with her proposed findings, which Rader's staff promptly delivered to Court 5.

25. From August 11, 2005 through April 20, 2006, Buntin wrote Court 5 on five occasions. His letters are not in the court file but are noted on the official case chronology as received by the court. There are no notations in the record indicating the letters were received by Commissioner Broyles.

26. On April 20, 2006, Rader sent an email to Commissioner Broyles inquiring about the status of her decision in the *Buntin* PCR, to which Commissioner Broyles did not reply. Commissioner Broyles has no independent recollection of receiving the email, but a computer analysis of her email account revealed that it had been opened.

27. On January 31, 2008, Commissioner Broyles submitted to the Commission an affidavit indicating that, upon reflection and a review of her personal records regarding her whereabouts in 2005 and 2006, she may have signed the *Buntin* PCR Order on Saturday, May 20, 2006, inadvertently retaining the typewritten year "2005" from Rader's 2005 proposed Order.

28. Judge Hawkins and Commissioner Broyles also filed on March 8, 2007 a Notice Explaining Delayed Ruling on Petition for Post-Conviction Relief ("Notice Explaining Delayed Ruling") in the *Buntin* case. (Exhibit C).

29. On March 8, 2007, in the Notice Explaining Delayed Ruling, Judge Hawkins and Commissioner Broyles reported that the *Buntin* file had been prematurely "archived" and "retrieved from archives."

30. Among the current and former staff members assigned to Court 5 in March 2007, including Judge Hawkins and Commissioner Broyles, no witness will identify himself or herself as the person who found the *Buntin* file or as the person who first received the file from the person who located it. Commissioner Broyles denies finding the file and would assert that the file had been recovered before she was even made aware of it having been lost.

31. Melissa Leithoff, the deputy clerk assigned to Court 5 in March 2007, also denies being the person who found the *Buntin* file or being the one who first received it from whoever found the file in 2007.

32. Court 5 documents designed to track the location of files contain no entries for the *Buntin* file indicating that it was delivered to the Clerk's office, stored in the common areas of Court 5, stored with "fat files," or taken home by Commissioner Broyles.

33. Among the current and former staff members assigned to the Marion County Clerk's Office archives in March 2007, each member would indicate that he or she did not locate the *Buntin* file in the archives, despite an extensive search for the file in March 2007 in the archives area, returned-files bin, and the warehouse.

34. Other than speaking with Judge Hawkins, Commissioner Broyles conducted no further investigation to support her statement in the Notice Explaining Delayed Ruling that the *Buntin* file was "archived" or "retrieved from archives."

35. Judge Hawkins reported to Commissioner Broyles that he found Commissioner Broyles' original PCR Order in the *Buntin* file in March 2007 and noticed several typographical errors caused by the electronic transfer of the original document from disk to the computer from which the original order was printed.

36. Judge Hawkins also told Commissioner Broyles that in March 2007 he located the diskette in the *Buntin* file that Commissioner Broyles had used to prepare her original PCR Order, inserted the diskette into his computer, corrected some of the typographical/electronic transfer errors, and reprinted the Order, but used the original signature page that Commissioner Broyles purportedly had signed May 20, 2005.

37. In March 2007, Commissioner Broyles did not believe it was a good idea to make any changes to the original PCR Order that had been found in the *Buntin* file, but she did not voice her concerns to Judge Hawkins.

38. Commissioner Broyles did nothing to secure or retain the diskette and the PCR Order that Judge Hawkins reported he found in the file.

39. Since April 20, 2007, neither the first PCR Order that Judge Hawkins reported he found in the *Buntin* file, nor the diskette containing the original PCR Order in the *Buntin* case, has been located. No Court 5 staff member recalls seeing the diskette, and no staff member will identify himself or herself as having removed the diskette or a PCR Order from the court file.

40. According to Judge Hawkins and Commissioner Broyles, on March 8, 2007, they believed that Commissioner Broyles had signed an Order granting Buntin's relief on May 20, 2005.

41. Judge Hawkins and Commissioner Broyles ruled that the *Buntin* PCR Order was effective March 8, 2007 for purposes of a possible appeal by the State. Further, Buntin's conviction would not be vacated until the State decided whether to appeal or seek a retrial.

42. On March 8, 2007, neither Judge Hawkins nor Commissioner Broyles scheduled a review of Buntin's case or release status.

43. On March 8, 2007, neither Judge Hawkins nor Commissioner Broyles personally supervised the processing of the *Buntin* PCR Order.

44. From March 8, 2007 through the first week of April 2007, neither Judge Hawkins nor Commissioner Broyles verified with Court 5 staff or the deputy clerk assigned to Court 5 that the *Buntin* PCR Order had been processed promptly.

45. The revised *Buntin* PCR Order and Notice Explaining Delayed Ruling were not entered onto the Court's electronic docket until March 27, 2007.

46. On April 10, 2007, Commissioner Broyles emailed Louis Ransdell from the Marion County Prosecutor's Office to find out if the State would be filing an appeal on *Buntin*.

47. On April 12, 2007, Commission counsel, Meg Babcock, contacted Judge Hawkins to inquire why there had been no progress on the *Buntin* case.

48. On April 12, 2007, Court 5 received a letter, which was addressed to Judge Hawkins, from Buntin, pleading for his release.

49. On April 12, 2007, Judge Hawkins scheduled a hearing for April 20, 2007 on the *Buntin* case.

50. Harold Buntin was released on April 20, 2007, after the State dismissed all charges against him.

51. Commissioner Broyles presided over the hearing on Robert Edwards' post-conviction-relief petition in *Edwards v. State*, cause no. 49G05-9604-PC-061303, taking the matter under advisement as of 10/13/04 and issuing the Order thirteen months later on 11/17/05. Commissioner Broyles would indicate that she delayed her order, in part, because the parties failed to ever file their Proposed Findings of Fact and Conclusions of Law.

52. Commissioner Broyles presided over the hearing on Stephen Bewley's post-conviction-relief petition in *Bewley v. State*, cause no. 49G05-9804-PC-064052, taking the matter under advisement as of 11/10/04 and issuing the Order thirteen months later on 12/8/05.

53. Commissioner Broyles presided over the hearing on Philip Johnsons' post-conviction-relief petition in *Johnson v. State*, cause no. 49G05-0302-PC-021874, taking the matter under advisement as of 6/3/05 and issuing the Order six months later on 12/8/05.

54. Commissioner Broyles presided over the hearing on Vondregus Bailey's post-conviction-relief petition in *Bailey v. State*, cause no. 49G05-0212-PC-311072, 49G05-0212-PC-306918, 49G05-0301-PC-003842, taking the matter under advisement as of 1/31/06 and issuing the Order thirteen months later on 2/5/07. The State failed to file their proposed Findings of Fact and Conclusions of Law until November of 2006, after being prompted by Commissioner Broyles to get the pleading on file.

55. Commissioner Broyles presided over the hearing on Stephanie Dunlap's post-conviction-relief petition in *Dunlap v. State*, cause no. 49G05-9801-PC-012097, taking the matter under advisement as of 12/14/05 and issuing the Order on 3/14/07.

56. Commissioner Broyles presided over the hearing on Decarlos Brown's post-conviction-relief petition in *Brown v. State*, cause no. 49G02-9510-PC-149022, taking the matter under advisement as of 11/12/04.

57. Commissioner Broyles' PCR Order in the *Brown* case was not issued until twenty-eight months later on March 22, 2007.

58. On March 21, 2007, Judge Hawkins and Commissioner Broyles issued a "Notice Explaining Delayed Ruling on Petition for Post-Conviction Relief" in the case of *Brown v. State*, cause no. 49G05-9510-PC-149022, reporting that this file had been closed and archived prematurely. (Exhibit D). In this case Commissioner Broyles reported that she had issued findings much earlier, but they had not been processed because the case was closed instead of reflecting her Order.

59. Commissioner Broyles presided over the hearing on James Stephens' post-conviction-relief petition in *Stephens v. State*, cause no. 49G05-9805-PC-076033, taking the matter under advisement as of 6/14/06 and issuing the Order nine months later on 3/22/07.

60. In a post-it, dated 3/21/07, affixed to the Court's "Findings of Fact and Conclusions of Law Denying Post-Conviction Relief" in *Stephens v. State*, cause no. 49G05-9805-PC-076033, Commissioner Broyles wrote, "show file lost causing delay in ruling." (Exhibit E). She issued the ruling without the file ever having been found.

61. The parties agree that Commissioner Broyles violated Canons 1 and 2A of the Code of Judicial Conduct, which require judges to uphold the integrity of the judiciary and enforce high standards of conduct, to respect and comply with the law, and to act at all times in a manner promoting public confidence in the integrity of the judiciary; that she violated Canon 3B(2) of the Code of Judicial Code, which requires judges to be faithful to the law; that she violated Canon 3B(9) of the Code of Judicial Conduct, which requires judges to dispose of all judicial matters fairly, promptly, and efficiently; and that she committed conduct prejudicial to the administration of justice.

62. The parties agree that the appropriate sanction for this misconduct is a permanent ban on Nancy L. Broyles serving in any judicial capacity of any kind, including service as a judge pro tempore.

AGREED DISCIPLINE

WHEREFORE, the parties, with the Chief Justice and John Trimble not participating, respectfully ask the Court to adopt their stipulated facts, to accept the agreed sanction, and to

impose upon Nancy L. Broyles the sanction of a permanent ban on service in any judicial capacity of any kind, including service as a judge pro tempore, as well as the costs of this proceeding.[1]

10/1/08
DATE

Nancy L. Broyles
Respondent

10/1/08
DATE

Jennifer Lukemeyer
Attorney No. 17908-49A
Counsel for Respondent

10/1/08
DATE

James H. Voyles, Jr.
Attorney No. 6211-49
Counsel for Respondent

October 1, 2008
DATE

Meg Babcock
Attorney No. 4107-49
Counsel to the Commission

October 1, 2008
DATE

Adrienne L. Meiring
Attorney No. 18414-45
Co-counsel to the Commission

October 1, 2008
DATE

Brenda Franklin Rodeheffer
Attorney No. 6118-49
Co-counsel to the Commission

[1] Respondent Nancy L. Broyles has attached her separate personal statement in support of this sanction to the Court. (Exhibit F).

In the
Supreme Court of Indiana

IN THE MATTER OF	)	
	)	
THE HONORABLE	)	
	)	
NANCY L. BROYLES	)	**Cause No. 49S00-0804-JD-156**
	)	
COMMISSIONER OF THE	)	
	)	
MARION SUPERIOR COURT	)	

NOTICE OF THE INSTITUTION OF FORMAL PROCEEDINGS

AND

STATEMENT OF CHARGES

The Indiana Commission on Judicial Qualifications, having found sufficient cause for formal disciplinary proceedings, now notifies the Honorable Nancy L. Broyles of the filing of these Charges. These Charges are brought under Admission and Discipline Rule 25 and before the Indiana Supreme Court, which, pursuant to Article 7, Section 4, of the Constitution of Indiana, has original jurisdiction over the discipline, suspension, and removal of all judges of this State. At all times pertinent to these Charges, Commissioner Broyles was employed as a part-time Commissioner by the Marion Superior Court. Commissioner Broyles may file an Answer within twenty days after service of these Charges.

BACKGROUND

1. Commissioner Nancy L. Broyles began serving as part-time Commissioner in the Marion Superior Court, Criminal Division #5 ("Court 5") in January 2001, when Judge Grant W. Hawkins assigned her to manage the court's post-conviction cases. Judge Grant W. Hawkins has been the presiding judge in Court 5 since January 2001.

2. These Charges against Commissioner Broyles, and the Charges filed concurrently against Judge Hawkins,[1] allege delay and dereliction of their duties as the judicial officers responsible for Harold D. Buntin's post-conviction case and as the judicial officers responsible for providing reliable and timely information about the court's delay in the *Buntin* case.

Delay – April 16, 2005 to March 8, 2007

3. Harold D. Buntin ("Buntin") was convicted of rape and robbery in 1986 and began serving a 50-year sentence in the Indiana Department of Corrections in 1994 after his extradition from Florida.

4. Buntin's conviction was affirmed on appeal in 1996.

5. In 1998, Buntin filed a Petition for Post-Conviction Relief in Court 5 based upon DNA evidence not available during his trial.

6. Commissioner Broyles presided over Buntin's post-conviction hearing on March 16, 2005. The DNA evidence established that the DNA in the semen taken from the rape victim after the crime did not match Buntin's DNA.

7. After the hearing, Buntin's attorney, Carolyn Rader ("Rader") and the State each submitted their proposed Orders to Commissioner Broyles. Rader urged Commissioner Broyles to grant Buntin's petition in light of the new DNA evidence, arguing that he probably would not be convicted if he were retried. The State argued that the other evidence against Buntin was sufficient to sustain the conviction, despite the DNA evidence.

8. Commissioner Broyles' decision was under advisement beginning April 15, 2005.

9. In January 2007, Buntin filed a complaint with the Commission alleging that his post-conviction case had been pending for nearly twenty-two months and that Rader had not communicated with him since 2005.

[1] 49S00-0804-JD-157

10. After the Commission began its investigation into the delay and contacted Judge Hawkins directly in February, it learned the *Buntin* file could not be located.

11. An unidentified person in Court 5 found the file in early March 2007.

12. On March 8, 2007, Commissioner Broyles issued an Order dated May 20, 2005 granting Buntin's petition for post-conviction relief.[2]

Prior Order

13. Judge Hawkins and Commissioner Broyles also filed on March 8, 2007 a "Notice Explaining Delayed Ruling."

14. They reported that Commissioner Broyles granted Buntin's petition on May 20, 2005, but that a Court 5 staff member or a clerk's employee assigned to Court 5 neglected to process the Order as Commissioner Broyles had directed on a post-it note, and the file was closed and archived as if the Order properly had been entered.

15. They wrote in their Notice Explaining Delayed Ruling, "Quite recently the court was advised that a ruling was still outstanding. The file was retrieved from the archives. The signed and dated Order, post-it note still attached, was found in the front of the file...The Court is filing the Order herewith."

16. However, the Order Judge Hawkins and Commissioner Broyles issued on March 8, 2007 was not the Order they reportedly found in the file, but was a new Order they prepared on March 8, 2007, dated May 20, 2005.[3]

17. Judge Hawkins explained later that, when he reviewed Commissioner Broyles' Order in March 2007, he noticed several typographical errors. The diskette Commissioner Broyles had used to prepare the Order was in the file. He testified that he inserted the diskette with Commissioner Broyles' Order into his computer, and corrected and reprinted the Order.

18. Neither Judge Hawkins nor Commissioner Broyles can recall whether the corrections made in 2007 required Commissioner Broyles to resign the Order or whether they attached the old signature page to the corrected Order.

19. On March 8, 2007, Judge Hawkins and Commissioner Broyles knew the Commission was investigating the delay in the *Buntin* case and knew or should have

[2] Until March 2007, Commissioner Broyles routinely issued final orders in post-conviction cases without obtaining Judge Hawkins' approval and signature, contrary to IC 33-33-49-16 and IC 33-23-5-8.

[3] Rader's proposed Order was used as a template to create the court's Order. When Commissioner Broyles signed the Order, she wrote in the month and day. The year "2005" was typewritten, a remnant of Rader's 2005 proposed Order.

known the importance of any evidence that Commissioner Broyles had ruled in *Buntin* on an earlier date.

20. However, neither Judge Hawkins nor Commissioner Broyles retained or secured the diskette or the first Order they said Commissioner Broyles signed on May 20, 2005.

Date of Prior Order

21. Throughout the first phase of the Commission's investigation, from March 2007 until January 2008, Commissioner Broyles insisted she signed Buntin's Order on May 20, 2005, thirty-five days after taking the issue under advisement, despite the following:

a. Commissioner Broyles has no independent memory of signing the *Buntin* Order in 2005.

b. There is no evidence of a 2005 Order on her word processing equipment.

c. Three months after May 20, 2005, Commissioner Broyles told Rader that she intended to work on the *Buntin* case and asked Rader for a diskette with her proposed findings, which Rader's staff delivered to Court 5 later that day.

d. Nearly a year after the date on the Order, Rader sent an email to Commissioner Broyles inquiring about the status of her decision in the *Buntin* PCR, to which Commissioner Broyles did not reply.

e. Buntin wrote the court on five occasions after the date of the Order asking for a decision. His letters are not in his file but are noted on the official case chronology as received by the court.

f. On May 20, 2005, Commissioner Broyles had at least three other post-conviction cases under advisement which were older than Buntin's case and on which she ultimately ruled after delays of twenty-eight months, thirteen months, and thirteen months respectively. And, in 2007, Commissioner Broyles ruled on four other cases after delays of six months, nine months, thirteen months, and fifteen months respectively.[4]

[4]

Case Name and Number	Under Advisement	Order Issued
Brown v. State 49G02-9510-PC-149022	11/12/04	03/22/07 (file reportedly also archived prematurely)
Bewley v. State 49G05-9804-PC-064052	11/10/04	12/08/05
Edwards v. State 49G05-9604-PC-061303	10/13/04	11/17/05
Johnson v. State 49G05-0302-PC-021874	06/03/05	12/08/05
Stephens v. State 49G05-9805-PC-076033	06/14/06	03/22/07 (file is lost)
Bailey v. State 49G05-0212-PC-311072	01/31/06	02/05/07
Dunlap v. State 49G05-9801-PC-012097	12/14/05	03/14/07

The Post-it Note

22. Judge Hawkins and Commissioner Broyles reported that the lost *Buntin* file included a dated post-it note on the Order on which Commissioner Broyles wrote her instructions to staff for processing the Order.

23. Both relied in part on the date of the post-it note to support their statements that Commissioner Broyles signed the *Buntin* Order in 2005.

24. Judge Hawkins provided the Commission with a copy of the post-it note early in the investigation. He and deputy bailiff Stephen Talley reported that the original note was dated "2005" but that the "5" designating the year, according to Mr. Talley, "didn't print well" and, according to Judge Hawkins, "was lost during the copying process."

25. Later, the Commission obtained the original post-it note from the *Buntin* file. Contrary to the statements that the number "5" indicating the Order was prepared in 2005 was lost during photocopying, the original post-it note includes only the incomplete date, "5-20-0", without a digit indicating the year.

Amended Explanation

26. The Commission notified Judge Hawkins and Commissioner Broyles in January 2008 that it was amending the focus of its investigation to include not only delays and neglect but also whether their statements were false that Commissioner Broyles prepared the *Buntin* Order in 2005. Commissioner Broyles then advised the Commission that, upon reflection, she may have signed the Order on Saturday, May 20, 2006 instead, inadvertently retaining the typewritten year "2005" from Rader's 2005 proposed Order.

Location of *Buntin* File until March 2007

27. Commissioner Broyles' statement that she may have signed the Order in May 2006 did not answer the question of the location of the lost *Buntin* file prior to its discovery in March 2007.

28. Court 5 documents designed to track the location of files, whether delivered to the Clerk's office, stored in the common areas of Court 5, stored with so-called "fat files," as the *Buntin* file was considered, or taken home by Commissioner Broyles, contain no entries for the *Buntin* file.

29. On about March 7, 2007, the *Buntin* file was located, and Judge Hawkins and Commissioner Broyles reported on March 8 that it had been prematurely "archived" and "retrieved from archives."

30. The *Buntin* file was never in the Clerk's office's archives.

31. Neither Judge Hawkins nor Commissioner Broyles undertook any serious inquiry to justify their statements that the file was "archived" or "retrieved from archives."

32. Among the Court 5 staff members, the deputy clerk assigned to Court 5, Judge Hawkins, and Commissioner Broyles, no witness will identify himself or herself as the person who found the file.

33. Judge Hawkins' deputy bailiff, Stephen Talley, initially advised the Commission that, in March 2007, he contacted the Clerk's office, that the Clerk's office had the *Buntin* file, and that either he or Commissioner Broyles retrieved the *Buntin* file from the Clerk's office.

34. Later, under oath, he denied any knowledge of who found the *Buntin* file or of its location before its appearance in early March.

35. Judge Hawkins was aware of Talley's misleading statements to the Commission and took no remedial action to address his employee's misconduct.[5]

Delay After March 7, 2007

36. On March 8, 2007, Commissioner Broyles and Judge Hawkins knew that Buntin had remained in prison for nearly two years with no apparent action on his petition.

37. They believed that Commissioner Broyles had signed an Order granting Buntin's relief on May 20, 2005, when his conviction should have been vacated and his release status reviewed.

38. On March 8, 2007, despite the consequences of the delay already incurred, neither Judge Hawkins nor Commissioner Broyles vacated his conviction, scheduled a review of his release status, or ensured that the Order was processed promptly.

39. They ruled only that the Order was effective March 8, 2007 for purposes of appeal or retrial and that Buntin's conviction would not be vacated until the State decided whether to appeal or seek a retrial.

[5] Judge Hawkins subsequently promoted Mr. Talley to the position of Chief Bailiff.

40. Although both Judge Hawkins and Commissioner Broyles were aware that the Commission was investigating Buntin's complaint and had been inquiring into the status of his case, neither notified the Commission that they had located the *Buntin* file or that they had issued the Orders, until the Commission inquired on March 21, 2007.

41. Neither Judge Hawkins nor Commissioner Broyles ensured the new Order promptly was entered onto the Court's electronic docket, which did not occur until March 27, 2007.

42. Rader did not file anything on Buntin's behalf, nor did the State advise the Court of its intentions regarding retrial, appeal, or dismissal of the original charges.

43. Thirty-three days after the effective date of Buntin's Order, on April 10, 2007, Commissioner Broyles sent an email to the State asking if they planned to appeal, indicating that Buntin's family had been calling the court and had been told that the State's time for appeal had not lapsed.

44. The Commission contacted Judge Hawkins and Commissioner Broyles on April 12, 2007 to inquire why there had been no progress in the case and urging immediate action; also on April 12, 2007, Judge Hawkins received a letter from Buntin pleading for his release.

45. On April 12, 2007, Judge Hawkins scheduled a release hearing for April 20, 2007.

46. On April 20, 2007, the State, Buntin, and Rader appeared before Judge Hawkins. The State dismissed the rape and robbery charges, and Judge Hawkins ordered Buntin's release.

CHARGES

The Commission incorporates the Background Section into each Count below.

Count I

By delaying a prompt ruling on Buntin's post-conviction petition, Commissioner Broyles violated Canon 3B(9) of the Code of Judicial Conduct, which requires judges to dispose of all matters fairly, promptly, and efficiently, and committed conduct prejudicial to the administration of justice.

Count II

By delaying prompt rulings in the *Brown, Bewley, Edwards, Johnson, Stephens, Bailey*, and *Dunlap* cases, Commissioner Broyles violated Canon 3B(9) of the Code of Judicial Conduct and committed conduct prejudicial to the administration of justice.

Count III

By issuing purportedly final Orders in post-conviction cases without obtaining the approval and signature of the presiding judge, Commissioner Broyles violated Canon 3(B)1 of the Code of Judicial Conduct, which requires judges to be faithful to the law.

Count IV

By losing the *Buntin* file or permitting an environment in which the file was lost, Commissioner Broyles violated Canon 2A, which requires judges to act at all times in a manner promoting the public's confidence in the judiciary, and committed conduct prejudicial to the administration of justice.

Count V

By losing Buntin's letters to the Court or permitting an environment in which the letters were lost, Commissioner Broyles violated Canon 2A, which requires judges to act at all times in a manner promoting the public's confidence in the judiciary, and committed conduct prejudicial to the administration of justice.

Count VI

By not notifying the Commission during its early investigation that the *Buntin* file had been located and an Order issued, Commissioner Broyles committed conduct prejudicial to the administration of justice.

Count VII

By representing that the *Buntin* file had been archived and retrieved from archives, Commissioner Broyles violated Canon 1, which requires judges to uphold the integrity of the judiciary, Canon 2A, and committed conduct prejudicial to the administration of justice.

Count VIII

By not securing on March 8, 2007 the evidence that an earlier order in the *Buntin* case had been prepared, Commissioner Broyles violated Canons 1 and 2A of the Code of Judicial Conduct and committed conduct prejudicial to the administration of justice.

Count IX

By not ensuring on March 8, 2007 that the *Buntin* Order was processed immediately, Commissioner Broyles violated Canons 1, 2A, and 3B(9) of the Code of Judicial conduct, and committed conduct prejudicial to the administration of justice.

Count X

By not ensuring that a hearing on the issue of Buntin's release or continued incarceration was not immediately scheduled after March 8, 2007, Commissioner Broyles violated Canons 1, 2A, and 3B(9) of the Code of Judicial Conduct, and committed conduct prejudicial to the administration of justice.

WHEREFORE, the Commission* respectfully requests that, upon the filing of Commissioner Broyles' Answer, the Indiana Supreme Court appoint three Masters to conduct a public hearing on the charge that Commissioner Broyles committed judicial

misconduct as alleged, and further prays that the Supreme Court find that Commissioner Broyles committed misconduct and that it impose upon her the appropriate sanction.

Respectfully submitted,

April 9, 2008
DATE

Meg W. Babcock
Counsel to the Commission
Atty. No. 4107-49

April 9, 2008
DATE

Adrienne L. Meiring
Staff Attorney to the Commission
Atty. No. 18414-45

Indiana Commission on
Judicial Qualifications
30 South Meridian Street, Suite 500
Indianapolis, IN 46204
(317) 232-4706

* Commission member John Trimble is not participating in this proceeding.

CERTIFICATE OF SERVICE

I certify that a copy of this "Notice of the Institution of Formal Proceedings and Statement of Charges" was sent by facsimile and certified mail to James H. Voyles and Jennifer M. Lukemeyer, Counsel for Commissioner Broyles, on this 9th day of April, 2008.

4-9-08
DATE

Meg Babcock
Counsel

Meg Babcock
Atty. No. 4107-49
Indiana Commission on
Judicial Qualifications
30 South Meridian Street, Suite 500
Indianapolis, IN 46204
(317) 232-4706

STATE OF INDIANA	)	IN THE MARION COUNTY SUPERIOR COURT,
	) SS:	CRIMINAL DIVISION, ROOM 5
COUNTY OF MARION	)	CAUSE NO.: CR85-028E

HAROLD DAVID BUNTIN,)
)
Petitioner,)
)
v.)
)
STATE OF INDIANA,)
)
Respondent.)

FILED
MAR 08 2007
CLERK OF THE MARION CIRCUIT COURT

FINDINGS OF FACT AND CONCLUSIONS OF LAW

GRANTING PETITION FOR POST-CONVICTION RELIEF

This matter comes before the Court on Petitioner's Petition for Post-Conviction Relief. On March 16, 2005, a hearing was held on the post-conviction relief petition.

Petitioner offered three (3) exhibits at the hearing. All exhibits were admitted without objection. The exhibits were as follows:

1. A certified copy of Orchid Cellmark file, Cellmark Case No. F041151, Agency Case No. CR85-028E, as Petitioner's Exhibit 1. (Business certification being the first 2 pages of the Exhibit).

2. A copy of the deposition of Ryan Satcher, DNA analyst II at Cellmark, which was taken on March 15, 2005, with Petitioner represented by Carolyn W. Rader and the State represented by Deputy Prosecutor Louis Ransdell (deposition having Cellmark's file incorporated absent business record certification by Robin Cotton, Ph.D.), which was marked as Petitioner's Exhibit 2.

COMMISSION'S EXHIBIT B

3. The entire Record of Proceedings, in six (6) volumes, marked as Petitioner's Exhibit 3.

Having considered the evidence, and the applicable law, the Court now finds and concludes as follows:

FINDINGS OF FACT

1. Beginning April 21, 1986, and concluding April 23, 1986, a jury trial was held in the above cause, with the Honorable Roy Jones presiding. Reuben Hill was counsel for Petitioner and Carole Johnson was the deputy prosecutor.

2. On the third day of trial, Petitioner failed to appear. The trial continued. Petitioner was found guilty of Rape, a Class A felony, and Robbery, a Class B felony.

3. On May 10, 1994, Petitioner was sentenced to fifty (50) years on the rape conviction and ten (10) years on the robbery conviction. The sentences were to be served concurrently. This sentence was imposed by the Honorable Gary Miller.

4. At the time of the charged crime, the Petitioner was fifteen (15) years old, with a birth date of February 7, 1969, and the crime occurring on August 4, 1984.

5. The defense at trial was alibi, specifically, that Petitioner was in the state of Texas during the time of the rape and robbery. Several witnesses were presented at trial who supported the alibi.

6. Petitioner appealed his convictions to the Indiana Court of Appeals. The

convictions and sentence were affirmed.

7. On December 9, 1998, the Petitioner filed his Petition for Post-Conviction Relief. Although Petitioner asserted several grounds for relief, the sole ground pursued at this date is newly discovered evidence. Specifically, Petitioner contends that Deoxyribonucleic Acid (ADNA) testing excludes him as the perpetrator of the crime of Rape. DNA comparison was not done in Petitioner's case at the trial level.

8. From Petitioner's Exhibit 3 (the Record), the Court finds that Shea Hayes (now Shea Anderson) and Valerie Breedlove testified that the victim's blood type is O, Rh positive, and is *not* a secretor. The Petitioner's blood type is O, Rh positive, and *is* a secretor.

9. Testimony at trial showed that 45% of the human population has a blood type of O, Rh positive. Testimony showed that 80% of the population are secretors.

10. The relevant trial testimony was as follows:

    a.) Kristi Miller's testimony (R. Vol. 3 p. 604-722);

    b.) Detective Stephen Odle (R. Vol. 4 p. 821-880);

    c.) Shea Hayes (now Shea Anderson) (R. Vol. 4 and 5 p. 960-1027);

    d.) Valerie Breedlove (R. Vol. 5 p. 1030-1053);

    e.) Dr. James Kasten (R. Vol. 4 p. 889-938).

11. The following information was learned through trial testimony of the aforementioned witnesses:

a.) In the summer of 1984, Kristi Miller was employed at Scheefer Cleaner,s, which is located at 54th and College Avenue in Indianapolis, Indiana. At the time, the dry cleaners was across from Atlas Supermarket. On August 4, 1984, Miller was getting ready to close the store at about 5:20 p.m. Miller noticed a young black male motioning to gain entry into the business. Since Miller had locked the front doors a little before closing time, she buzzed in the man.

b.) The man said he needed to pick up dry cleaning under the name A Button. After finding nothing under that name, the man used the business telephone, then told Miller that the dry cleaning was under the name A Evans or A Harris. Miller brought out the dry cleaning.

c.) While Miller's back was turned, the man placed scissors to Miller's neck. He took money from the register and Miller's pocket and rummaged through Miller's purse. He then told Miller to take off her clothes. The man had sexual intercourse with Miller while he kept the scissors to her neck. Afterwards, the man tied her up and gagged her with a cloth that Asmelled like sex. During the rape, Miller's glasses were knocked off. She was legally blind in one eye and near sighted in the other eye. She had hearing problems.

d.) After the man left the business, Miller ran to a neighborhood package liquor store where police assistance was called. Alice Parnell, from the

Indianapolis Police Department, Sex Crimes Division, responded, as well as other officers. Miller told Parnell that the attacker was about nineteen (19) years old, 5'9" and 160 pounds. She said he was dressed nicely, light skinned (Miller is Caucasian) and had no facial hair. Miller said that she thought the attacker had ejaculated. Parnell passed on this information to Det. Stephen Odle.

e.) Miller went to Wishard Hospital and was examined by Dr. James Kasten. Dr. Kasten completed a rape kit. Miller told Dr. Kasten that she was not certain that the attacker had climaxed, but believed he had.

f.) Det. Stephen Odle was assigned to the case. Miller looked through several photographs of sex offenders. She could not identify anyone as the attacker. Miller began her own investigation and found high school yearbooks from Broad Ripple High School. She found a photograph of a man named A Harris and contacted Odle to report a possible identification. Det. Odle checked with a parent of A Harris, and concluded that A Harris had an alibi for August 4, 1984.

g.) Several months later, on November 28, 1984, Miller saw the Petitioner inside Atlas Supermarket. She alerts police that the attacker is in the market. Petitioner was displayed in the Atlas Supermarket parking lot while Miller was driven by him in a police van. Miller identified Petitioner as her attacker. Petitioner was arrested.

h.) From Exhibits 1 and 2 (from the March 16, 2005, Post-Conviction Hearing) the Court finds that Ryan Satcher is an employee (crime laboratory analyst in the biology section) at the Florida Department of Law Enforcement. In 1997, Satcher received his bachelor's degree in zoology from the University of Florida. In 2002, Satcher received his master's degree in forensic biosciences from George Mason University in Virginia.

i.) Ryan Satcher testified that he was employed by Cellmark from 2002 until June 25, 2004, as a DNA analyst II. Mr. Satcher was assigned the responsibility of analyzing the requested DNA testing on Cellmark file F041151, Agency Case No. CR85-028E. (Petitioner's Exhibit 1).

j.) Satcher first performed DNA presumptive testing on a vaginal swab. This was an acid phosphate test. The result was positive for seminal fluid.

k.) On June 3, 2004, Satcher performed a microscopic search for spermatozoa cells from a sample taken from Miller's vaginal swab. DNA testing was then done by Short Tandem Repeat (ASTR). [Note: "STR" was transcribed as "AFDR" by the court reporter in Exhibit 2, p. 9]

l.) On June 15, 2004, Satcher tested a larger quantity of substance taken from the vaginal swab. He performed the DNA testing again using the STR method. The results were identical with the June 3, 2004, test, but the quantity of the sample improved the ability to further discern the DNA

profile.

m.) On June 18, 2004, Satcher tested the buccal swab of Petitioner. The DNA that was analyzed presented a full profile - 13 locations or loci.

g.) Satcher testified that his findings were as follows:

i.) The vaginal swab taken from Miller showed DNA profiles of more than one contributor.

ii.) Satcher was able to split the fluid examined into epithelial cell fractions and a spermatozoa cell fraction, with each having complete DNA profiles.

iii.) On the epithelial cell fraction, two (2) distinct DNA profiles were present. One was consistent with the vaginal swab contributor, Miller. Satcher knew this from having been provided a dried blood sample which was the standard for Miller. The other epithelial cell fraction showed genotype (DNA profile) of a male contributor. The genotype was compared to Petitioner's DNA profile. Petitioner was excluded.

iv.) From the spermatozoa cell fraction from the vaginal swab sample tested, a DNA profile was obtained from a single male contributor. This genotype was compared to that of Petitioner. Petitioner was excluded.

h.) Mr. Satcher stated that, on June 25, 2004, all testing and all results were

complete. He gave the case file to Lewis Maddox, Ph.D., the laboratory director. Dr. Maddox looked over the entire case folder, looked at all of the notes, all of the data that was generated and he made sure that everything was done properly. (Exhibit 2, p. 18).

i.) Mr. Satcher said that all Cellmark Reports of Laboratory Examinations are signed by the analyst and the technical reviewer. On Satcher's last day, June 25, 2004, the report had not been reduced to writing for the benefit of Petitioner and the State.

j.) The Report was dated June 30, 2004. Satcher testified that he confirmed the dates of reagent strips with his former supervisor, Paula Clifton, on the morning of his deposition. Clifton told Satcher that Sarah Blair had printed out the reagent blanks of Petitioner to attach to the file. Satcher testified that the creation dates of Petitioner's testing confirmed that Satcher had, in fact, done all the testing on Petitioner. Additionally, Blair had merely signed her name on the analyst's signature line. (Exhibit 2, 18-19).

k.) Exhibit 1 is a certified copy of the Cellmark case file evidencing the documentation of all data received and all tests performed. The Report of Laboratory Examination, contained in Exhibit 1, dated June 30, 2004, memorializes the testing and comparisons done by Satcher. The Exhibit complies with chain of custody requisites for samples tested.

CONCLUSIONS OF LAW

1. In order to prevail on a petition for post-conviction relief, the petitioner must establish that, by a preponderance of the evidence, he is entitled to relief. *Bobbitt v. State*, 725 N.E.2d 521, 522 (Ind.Ct.App.2000).

2. The petitioner has met his burden of proof on the issue raised and litigated in his Petition for Post-Conviction Relief.

3. The nine (9) prongs are follows:

   a.) That the evidence was not available at the time of trial;

   b.) That the evidence is material and relevant;

   c.) That the evidence is not cumulative;

   d.) That the evidence is not merely impeaching;

   e.) That the evidence is not privileged or incompetent;

   f.) That due diligence was used to discover it in time for trial;

   g.) That the evidence is worthy of credit;

   h.) That the evidence can be produced upon a re-trial of the case; and

   i.) That the newly discovered evidence will probably produce a different result. *Pinkins v. State*, 799 N.E.2d. 1079,1092 (Ind.Ct.App.2003), *trans. denied* March 5, 2004, citing *Godby v. State*, 736 N.E2d 252, 258)Ind. 2000).

   In *Pinkins v. State*, 799 N.E.2d 1079 at 1091-1092, the appellate court

found that Pinkins had failed to meet his burden on newly discovered evidence related to DNA. Also in *Pinkins*, the appellant was one of five (5) men who raped, robbed and abducted a woman. The crime occurred on December 7, 1989. In 1990, DNA tests were performed by Cellmark Diagnostic Laboratory. DNA profiles were found for three (3) separate individuals. The samples were taken from the victim's vaginal swabs and from cuttings from her sweater and jacket worn by her on the night of the rape. The attackers used the victim's jacket to wipe their genitals and/or ejaculate after coitus interruptus.

Three (3) separate profiles of genetic code were found. One came from the victim, and the other two (2) came from unknown individuals. They did not match the five (5) defendants, nor two (2) other men whose genetic code was compared.

However, a hair taken from the victim's sweater was consistent with the hair of one of the appellant's co-defendants.

The appellant had samples retested for the purpose of maintaining his post-conviction claim of newly discovered evidence. An analyst from Cellmark, Juliette Harris, testified that the 2001 tests showed the same findings as those generated in 1990. In 1990, the methodology used to test DNA was Restriction Fragment Length Polymorphism (ARFLP@). In 2001, the technology had improved to allow for genetic testing of smaller samples. In fact, the 2001 methodology used by Cellmark on appellant's behalf was Polymerase Chain

Reaction (APCR).

Harris's conclusion was that the 1990 results were the same as the 2001 results. That is, the DNA tests showed that Pinkins could be neither included nor excluded as one of the rapists. For this reason, the claim of Anewly discovered evidence@ was not met. The 2001 testing was merely cumulative. *Id.* at 1092.

Importantly, the court found that there was an abundance of circumstantial evidence linking Pinkins to the crime. Among the many pieces of circumstantial evidence were:

i.) Special coveralls that were flame retardant were used to cover the face of the victim during the rape. The uniqueness of the lot number placed the order of the protective clothing from Luria Brothers Company, a scrap metal management company. Appellant worked at the company, as did his co-defendants. Four (4) days after the attack, appellant and two (2) co-defendants requested new coveralls, all saying the first set had been stolen from one of the co-defendant's car.

ii.) A flight attendant, leaving O'Hare International Airport, had been rear ended near Merrillville, Indiana, approximately one half hour before the victim's car was rear ended in the same vicinity. Men approached the flight attendant as she exited her car to assess the damage. Fortunately, another vehicle pulled over to offer

assistance, and the men left the scene. The flight attendant reported this incident to the police. The rear-end accident was identical to the way the victim was stopped in the *Pinkins* case. Both the flight attendant and the victim in Pinkins case gave identical descriptions of the vehicle that hit their respective cars. Police discovered that only nine (9) vehicles in Lake and Porter counties matched the description. One of those cars belonged to a co-defendant who worked for a cleaning company contracted by Luria Brothers.

iii.) Testimony from an inmate, confined with Pinkins prior to trial, disclosed that Pinkins admitted raping a white lady with green coveralls over her head. Appellant told the inmate that he was not concerned about DNA tests because he did not ejaculate inside the woman.

iv.) A great deal of testimony was admitted showing Pinkins' whereabouts in the two (2) hours leading up to the abduction and rape. All evidence placed Pinkins in the vicinity of the crime. Testimony showed that Pinkins and two (2) co-defendants left work at the scrap management company at 11:00 p.m. on December 6, 1989 - two and one half hours before the attack

4. Petitioner's case for post-conviction relief and *Pinkins* are readily distinguishable.

No DNA testing was done in this case. Blood grouping, Rh factor determination and secretor/non-secretor status were the only body fluid identifiers used in Petitioner's trial. Based on the large percentage of the population who are blood typ O, Rh positive, and are secretors, Petitioner's blood status makes him extraordinarily non-unique.

5. The DNA testing done in 2004 used PCR. (Exhibit 1). This evidence is newly discovered and not available at the time of Petitioner's trial. It is material and relevant inasmuch as the results exclude Petitioner as a donor. Because DNA comparison was not used at trial, the evidence is not cumulative. For the same reason, it is not merely impeaching. It is not privileged or incompetent. Due diligence to discover this evidence at the time of trial is not applicable since DNA PCR testing was not done at trial. The evidence is worthy of credit. The evidence can be produced upon retrial of the case. Finally, the evidence will probably produce a different result. That is, A [a] sufficient probability of a different result upon retrial is present where the omitted evidence would create a reasonable doubt that did not otherwise exist. *Rhymer v. State*, 627 N.E.2d 22, 824 (Ind.Ct.App.1994), citing *Fox v. State*, 568 N.E.2d 1006, 1008 (Ind. 1991).

6. The swabs from the victim's vagina and the DNA profiles from Petitioner are mutually exclusive. Pursuant to Satcher's examination, Petitioner is excluded as a sperm donor. Petitioner is also excluded as an epithelial cell donor.

7. The victim's identification of Petitioner as the perpetrator is weakened by her

primary identification of a young man named A Harris in a Broad Ripple High School yearbook.

8. Miller's identification is further weakened by her visual impairment, and, by the passage of time between the rape of August 4, 1984, and seeing the Petitioner at Atlas Supermarket on November 28, 1984.

9. Petitioner has met his burden.

Based on the aforementioned Findings of Fact and Conclusions of Law, the Court now **ORDERS** that the Petition for Post-Conviction Relief is hereby **GRANTED** on this 20th day of May, 2005.

JUDGE, Marion County Superior Court,
Criminal Division, Room 5

DISTRIBUTION:
Louis Ransdell, Deputy Prosecutor
Carolyn Rader, Esq.

STATE OF INDIANA	)	IN THE MARION SUPERIOR COURT
	)SS:	CRIMINAL DIVISION, ROOM FIVE
COUNTY OF MARION	)	CAUSE NO. CR85-028E (85-006873)

FILED

MAR 08 2007

CLERK OF THE MARION CIRCUIT COURT

HAROLD DAVID BUNTIN	)	
	)	
vs.	)	
	)	
STATE OF INDIANA	)	

NOTICE EXPLAINING DELAYED RULING
ON PETITION FOR POST-CONVICTION RELIEF

Petitioner herein, by counsel, filed his PETITION FOR POST-CONVICTION RELIEF on December 9, 1998 and, after a great deal of discovery, the court's Commissioner, the Honorable Nancy L. Broyles, presided over a hearing in March of 2005. After the hearing the parties were directed to provide proposed findings and conclusions. The parties satisfied their obligation inasmuch as Petitioner filed his proposed findings of fact and conclusions of law on or about April 15, 2005 and the State of Indiana submitted its proposed findings and conclusions on or about April 18, 2005.

The Commissioner found the Petitioner's proposal appropriate and signed a slightly amended copy of his proposed finding on or about May 20, 2005 and, following standard procedure, placed a post-it note on the front of the Order directing a the bailiff who usually entered PCR rulings to properly enter the Order and distribute copies to all parties. Whether the bailiff failed to follow the provided directions or whether the deputy clerk assigned to this court failed to discharge her responsibilities, the Order was never

entered of record and copies were never distributed to the interested parties. Rather, the file was closed and archived as if the court's Order had been properly entered into the Record.

Quite recently the court was advised that a ruling was still outstanding. The file was retrieved from the archives. The signed and dated Order, post-it note still attached, was found in the front of the file. The Order was paper-clipped together. If the Order had been properly processed, the Order would have been stapled together after copies were made and mailed to the appropriate parties. The court is filing the Order herewith. Copies of the Order and copies of this Notice will be sent to all parties. For purposes of appeal or retrial the Order granting the relief should be considered entered of record the same day this document is signed.

DATED:_____

Nancy L. Broyles, Master Commissioner

DATED: 8 Mar 07

Grant W. Hawkins, Judge
Marion Superior Court
Criminal Division, Room Five

DISTRIBUTION:

LOUIS RANSDELL
MARION COUNTY PROSECUTOR'S OFFICE

CAROLYN RADER
129 E. Market Street, Suite 1100
Indianapolis, IN 46204

STATE OF INDIANA	)	IN THE MARION SUPERIOR COURT
	)SS:	CRIMINAL DIVISION, ROOM FIVE
COUNTY OF MARION	)	CAUSE NO. 49G05-9510-PC-149022
DECARLOS BROWN	)	
	)	
vs.	)	
	)	
STATE OF INDIANA	)	

(151) FILED
MAR 21 2007
Elizabeth A. White
CLERK OF THE MARION CIRCUIT COURT

NOTICE EXPLAINING DELAYED RULING
ON PETITION FOR POST-CONVICTION RELIEF

Petitioner herein , by counsel, filed his PETITION FOR POST-CONVICTION RELIEF and a hearing occurred on September 14, 2004. After the hearing the parties were directed to provide those findings and conclusions. The parties satisfied their obligation inasmuch as the petitioner filed his proposed findings of fact and conclusions of law on or about Ocotber 15, 2004 and the State of Indiana submitted its proposed findings and conclusions on or about November 14, 2004.

The Court found the State's proposed findings appropriate and signed the proposed finding on or about February 18, 2005 and placed a note on the front of the order directing staff to properly enter the order and distribute copies to all parties.

Whether the court staff failed to follow the provided directions or whether the deputy clerk assigned to this court failed to follow the directions, the order was never entered of record and copies were never distributed to the interested parties. Rather, the file was closed and archived.

The court recently conducted a review of all petitions for post-conviction relief after it received notice in another cause that a ruling was still outstanding. During that review, the failure to take appropriate action in this cause was discovered. The court is filing herewith the findings of facts and conclusions of law denying Mr. Brown's petition. Copies will be sent to all parties forthwith. The date for calculation of appeal shall be the filemarked date.

DATED: 3-21-07

Nancy L. Broyles, Master Commissioner

DATED: 21 Mar 07

Grant W. Hawkins, Judge
Marion Superior Court
Criminal Division, Room Five

DISTRIBUTION:

LEWIS RANSDELL
MARION COUNTY PROSECUTOR'S OFFICE

HILLARY RICKS
140 E. Market Street, Suite 700
Indianapolis, IN 46204

STATE OF INDIANA	)	
	)	IN MARION SUPERIOR COURT
COUNTY OF MARION	)	CRIMINAL DIVISION, ROOM FIVE
JAMES STEPHENS	)	
	)	
v.	)	CAUSE NO. 49G05-9805-PC-076033
	)	
STATE OF INDIANA	)	

(151)

FINDINGS OF FACT AND CONCLUSIONS OF LAW DENYING POST-CONVICTION RELIEF

As required by Indiana Post-Conviction Rule 1(6), and after reviewing the parties' proposed findings, the Court now enters its specific Findings of Fact and Conclusions of Law on all issues raised in this Cause.

FINDINGS OF FACT

1. The evidence, from Probable Cause Affidavit of Deputy Sheriff Henry Rendleman, May 12, 1998, supporting Petitioner's James Stephens' conviction shows:

On May 12, 1998, Jean Cox reported to the Marion County Sheriff's Department suspicious activity occurring in the 9000 block of North Belmar Avenue, involving a van parked facing the wrong way in the street, and a man traversing back and forth between various house and the van. *Id.* at 1. Det. Rendleman responded to the call and found Stephens in the residence of 942 North Belmar and arrested him for burglary. The rear doors of both 948 North Belmar Avenue and 942 North Belmar had been forcibly kicked open. *Id.* at 2.

Det. Rendleman, with the assistance of owners of the homes, found stolen property from both residences hidden in 942 North Belmar Avenue. *Id.* at 2. Ms. Cox

was able to identify Stephens as the man she had witnessed moving back and forth from the homes to the many. *Id.* at 3.

After being taken into custody Stephens waived his rights and, in a formal taped confession, admitted to breaking into both residences with the intent to steal cash and jewelry. *Id.* at 4. He also admitted to hiding the jewelry taken from both residences in the locations where it was later found by Det. Rendleman. *Id.* at 4.

2. Petitioner was charged with two counts of Burglary and two counts of Theft on May 13, 1998. The Court appointed Steven Geller to represent Petitioner on May 14, 1998. This Cause was transferred to Expedited Court on September 28, 1998, and Laura Iosue entered her Appearance on Petitioner's behalf on September 29, 1998. On January 12, 1999, Petitioner executed a written Waiver of Attorney, which the Court accepted. Petitioner filed his Motion in Limine and Motion to Suppress Evidence in February 1999.

3. On April 12, 1999, Iosue filed a Motion for Psychiatric Examination. Petitioner's Exhibit A. Although the minute entry states that the Court granted this motion on April 16, 1999 and appointed Dr. Masbaum to conduct the psychiatric evaluation, the Court's file contains no further documentation related to this motion, and there is no reference to a hearing on the motion.

4. At a pre-trial conference held June 30, 1999, Petitioner stated he wished represent himself. The Court then found that he knowingly and voluntarily waived his right to counsel. Petitioner filed more pre-trial motions.

5. On September 2, 1999, Petitioner plead guilty to all counts and the Court accepted Petitioner's plea. Petitioner represented himself with LouAnne Morrisey as standby counsel.

6. On October 14, 1999, Petitioner filed a motion to withdraw plea. The Court denied Petitioner's motion.

7. On November 3, 1999, Petitioner received a 20-year sentence on Count 1 and a 20-year sentence on Count 2. These sentences are to be served consecutively. Petitioner also received a 3-year sentence on Count 3 to be served concurrently with Count 1 and a 3-year sentence on Count 4 to be served concurrently with Count 2. Petitioner did not appeal.

8. On September 12, 2001, Petitioner filed his *pro se* Petition for Post-Conviction Relief, alleging the following claims: a.) the Court erred by not holding a hearing to determine Petitioners competence; b.) the Court erred by allowing him to waive his right to counsel without holding a competency hearing; c.) the Court erred by accepting a guilty plea without holding a competency hearing.

9. On September 25, 2001, the State filed its Response to the Petition.

10. On May 10, 2006, the Court held an Evidentiary Hearing on the allegations raised by Petitioner. Petitioner introduced into evidence: a.) a copy of the Motion for Psychiatric Examination; b.) an incomplete copy of a letter from Dr. Masbaum; c.) a copy of the Pre-trial Conference minutes sheet showing a knowing a voluntary waiver of counsel. The State's motion for the Court to take judicial notice of its file was granted.

11. The evidence is with the State and against the Petitioner.

CONCLUSIONS OF LAW

1. *STANDARD OF REVIEW.* Post-conviction relief is a collateral attack on the validity of a criminal conviction, and the petitioner carries the burden of proof. *Timberlake v. State,* 753 N.E.2d 591, 597 (Ind. 2001). This collateral challenge to the conviction is limited to the grounds enumerated in the post-conviction rules. *Id.* ,citing Ind. Post-Conviction Rule 1(1). PC Rule 1 reads, in pertinent part:

> (a) Any person who has been convicted of, or sentenced for, a crime by a court of this state, and who claims:
>
> (1) That the conviction or the sentence was in violation of the Constitution of the United States or the constitution or laws of this state;
> (2) That the court was without jurisdiction to impose sentence;
> (3) That the sentence exceeds the maximum authorized by law, or is otherwise erroneous;
> (4) That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
> (5) That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint;
> (6) That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion petition, proceeding, or remedy;
>
> may institute at any time a proceeding under this rule to secure relief.

Thus, in order to grant relief, the Court must find the preponderance of the evidence proved Petitioner is entitled to relief under one of the provisions enumerated above.

2. **Competency Hearing.** The Court finds that Petitioner is entitled to no relief. Indiana Code § 35-36-3-1 requires a trial court, upon having a reasonable ground for believing a defendant incompetent, appoint two disinterested physicians to examine

the defendant. *Hammer v. State,* 545 N.E.2d 1,3 (Ind. 1989). Dr. Masbaum, in his examination, found that Petitioner "does have comprehension sufficient to understand the nature of the proceedings" and "was of sound mind at the time of the alleged offenses." *Id.* At 3. Petitioner, in an apparent effort to deceive the Court, filed Dr. Masbaum's letter without the substantive psychiatric opinion and with the pages renumbered.

It is well established that there is no necessity for a hearing after a physician's finding of competency "because there was no reasonable ground to believe that the defendant was incompetent to stand trial." *Fuller v. State,* 391 N.E.2d 1137 (Ind. 1979), *see also Clifford v. State,* 457 N.E.2d 536, 540 (Ind.1984). This also applies where there is only one psychiatrist who has submitted their report that the subject of the examination was competent. *Adams v. State* 386 N.E.2d 657, 660 (Ind. 1979).

Furthermore, Petitioner's deportment during the proceedings belies his claim of either an existing or former lack of competency. It is clear from the pre-trial pleadings and Petitioner's conduct during the post-conviction relief that he has knowledge of the rules for post-conviction relief and the presentation of evidence exceeding what may normally be expected of a *pro se* Petitioner. Specifically, the Petitioner successfully moved for the admission of three items of evidence, which he previously marked in successive order and also made copies available to the State. The Petitioner orally provided an in-depth recitation to the Court of his case's procedural history, explaining amendments to the *pro se* Petition, and otherwise showed a high degree of cognition during his interactions with the Court. At the end of Petitioner's presentation of evidence he submitted hand written proposed findings of fact and conclusions of law for the Court's consideration, which was done without the benefit of counsel or additional time,

post-hearing, in which to prepare same. The fact that Petitioner chose to represent himself does not mean that he could not reasonably assist counsel. Finally, Petitioner presented no evidence at his post-conviction hearing to support his claim that he was incompetent. Whether reasonable grounds exist to order an evaluation of competency is a decision assigned to the sound discretion of the trial court and is reviewed only for an abuse of discretion. *Cotton v. State,* 753 N.E.2d 589, 591 (Ind.2001). The Court therefore finds that Petitioner has not shown that the Court abused its discretion in failing to order a competency hearing and, thus, is entitled to no relief.

3. **Waiver of counsel.** The Court finds that Petitioner knowingly and voluntarily waived his right to counsel. A criminal defendant's decision to waive his right to counsel and proceed *pro se* must be knowing, intelligent, and voluntary. *Jones v. State,* 783 N.E.2d 1132, 1138 (Ind. 2003) (citing *Greer v. State,* 690 N.E.2d 1214, 1216 (Ind. Ct. App. 1998)). "Waiver of assistance of counsel may be established based upon the particular facts and circumstances surrounding the case, including the background, experience, and conduct of the accused." *Id.* The Court finds that Petitioner executed a written Waiver of Attorney on January 12, 1999, which the Court accepted after a hearing on the Motion. The Court held a second hearing regarding the Petitioner's waiver on June 30,1999, and again accepted the waiver. *Id.* The absence of a competency hearing does not constitute a defect in the waiver process since the holding of a competency hearing was itself not required. Petitioner presented no other evidence at his post-conviction hearing that proves any defect in this process. Moreover, Petitioner's conduct – in particular, his presentations of pre-trial issues in motions – showed that he prepared for his trial and presented his cause in a cogent fashion. The Court therefore finds that

Petitioner voluntarily and knowingly waived his right to counsel and he is entitled to no relief on this claim.

4. **Guilty Plea.** The Court finds that Petitioner knowingly and voluntarily waived his rights and accepts his guilty plea. The Court finds that Petitioner executed a written Plea Agreement and requested leave to plead guilty September 2, 1999, which the Court accepted after a hearing on the Plea. It is well established that a court has wide discretion in accepting or denying a guilty plea. *Breedlove v. State*, 134 N.E.2d 226, (Ind. 1956). A court has not abused its discretion in accepting a guilty plea without holding a competency hearing when psychiatric examination has shown the Petitioner was competent. *Snyder v. State*, 500 N.E.2d 154, 156 (Ind. 1986) (citing *Montague v. State,* 360 N.E.2d 181 (Ind. 1977)). Petitioner presented no evidence at his post-conviction hearing showing that he was incompetent or that there was any other procedural defect. The Court therefore finds that Petitioner has not shown that the Court abused its discretion in accepting Petitioner's guilty plea and, thus, is entitled to no relief.

5. The law is with the State and against the Petitioner.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Petition for Post-Conviction Relief is hereby DENIED.

All so ordered this 21st day of March, 2008.

Judge
Marion Superior Court
Criminal Division G-05

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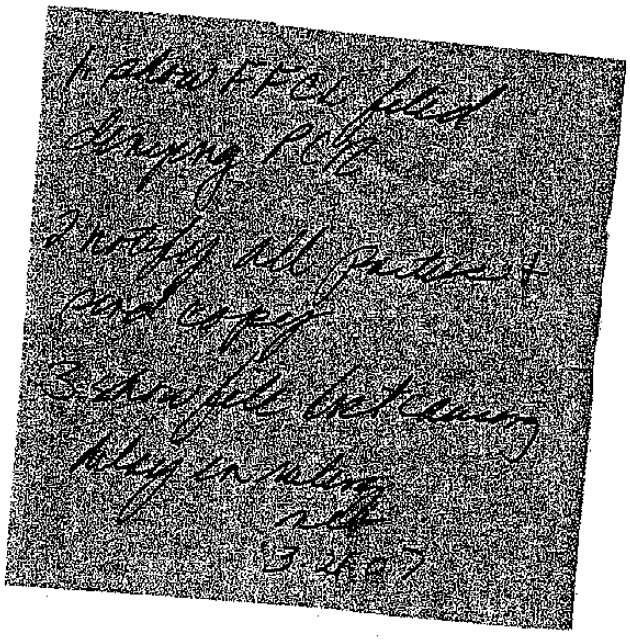

COMMISSION'S EXHIBIT

In the

Supreme Court of Indiana

IN THE MATTER OF	)	
	)	
THE HONORABLE	)	
	)	
NANCY L. BROYLES	)	**Cause No. 49S00-0804-JD-157**
	)	
COMMISSIONER OF THE	)	
	)	
MARION SUPERIOR COURT	)	

RESPONDENT'S PERSONAL STATEMENT

IN SUPPORT OF

CONDITIONAL AGREEMENT FOR DISCIPLINE

Ms. Nancy L. Broyles, in person and by counsel, submits Respondent's Personal Statement in Support of Conditional Agreement for Discipline and would show the Court as follows:

RESPONDENT'S STATEMENT TO THE COURT

Commissioner Broyles takes full responsibility for the delay in the *Buntin, Bailey, Bewley, Brown, Dunlap, Edwards, Johnson,* and *Stephens* cases, for her subsequent failure to effect the *Buntin* PCR Order promptly after March 8, 2007, for her inaction in reviewing Buntin's bond status after issuing the March 8th Orders, and for failing to adequately preserve evidence of a prior PCR Order. She offers her apology particularly to Mr. Buntin and his family and Carolyn Rader, as well as to other judicial officers, the Commission, and the Court.

RESPONDENT'S STATEMENT OF MITIGATION

Firstly, Commissioner Broyles has consistently shown remorse for the unfortunate events that bring her before the Commission and the Supreme Court of Indiana. She accepts responsibility for her actions and inactions as set out herein. She has fully cooperated with the

Commission's investigation and has tried to provide all they asked from her. Commissioner Broyles submitted to a voluntary polygraph that showed no deception on all relevant questions posed. (Exhibit 1).

Secondly, Commissioner Broyles has served the bench and bar of this State for almost 30 years. She has earned a reputation for being a diligent and competent attorney, a fair and impartial jurist, and a person of high morals and integrity. She has clerked for the Indiana Supreme Court, worked as a prosecuting attorney, maintained a private practice, served as pauper appellate counsel, and served the Marion County courts as a judicial officer for many years. Through serving in these capacities is how she earned her reputation. The many advocates for Commissioner Broyles is evidenced by the numerous letters of support written on her behalf and the willingness of many to attest to the aberrant nature of the charges for which she has accepted responsibility.

Finally, a public reprimand adequately sanctions her for the admissions made as part of this agreement. A public reprimand remains on her record and is of great personal consequence for her as it would any attorney or judicial officer that considers their reputation to be their largest asset.

WHEREFORE, Respondent Nancy Broyles, by counsel, respectfully asks the Court to adopt the stipulated facts, to accept the agreed sanction, and to impose upon Nancy L. Broyles the sanction, as detailed in the accompanying Statement of Circumstances and Conditional Agreement For Discipline.

9/22/08
DATE

Nancy L. Broyles
Respondent

9/22/08
DATE

Jennifer Lukemeyer
Attorney No. 17908-49A
Counsel for Respondent

9/22/08
DATE

James H. Voyles, Jr.
Attorney No. 631-49
Counsel for Respondent

A CORRUGATED RUBBER TUBE WAS FASTENED AROUND THE SUBJECT'S CHEST FOR THE PURPOSE OF RECORDING A CONTINUOUS INDICATION OF THE SUBJECT'S RESPIRATORY PATTERN AND VARIATIONS THEREIN.

AN INSULATED SEATING FOR TWO PROTRUDING ELECTRODES WERE FITTED ON THE SUBJECT'S RIGHT HAND FOR THE PURPOSE OF RECORDING A CONTINUOUS INDICATION OF THE SUBJECTS SWEAT GLAND ACTIVITIES AND VARIATIONS THEREIN.

THE SEATED SUBJECT WAS INSTRUCTED TO SIT STILL, KEEP BOTH FEET FLAT ON THE FLOOR, AVOID UNNECESSARY MOVEMENT DURING THE RUNNING OF THE TEST, AND TO ANSWER EACH OF THE QUESTIONS WITH A SINGLE WORD, "YES" OR "NO."

A LAFAYETTE POLYGRAPH MODEL LX4000 COMPUTER, TO WHICH THE ABOVE ACCESSORIES WERE ATTACHED, WAS THEN ACTIVATED IN ACCORDANCE WITH STANDARD PROCEDURE. THE POLYGRAPH PRODUCED CONTINUOUS AND SIMULTANEOUS RECORDINGS AS DESCRIBED ABOVE.

IN THE BEGINNING OF EACH TEST, IRRELEVANT QUESTIONS WERE ASKED FOR THE PURPOSE OF INDICATING THE SUBJECT'S NORMAL TRACINGS, AND EXCITEMENT LEVEL, WITH STIMULUS THROUGH THE BALANCE OF EACH OF THE TESTS. THE EXAMINEE WAS ASKED RELEVANT QUESTIONS PERTAINING TO THE MATTER UNDER EXAMINATION. THE RELEVANT QUESTIONS WERE INTERSPERSED WITH IRRELEVANT AND CONTROL QUESTIONS FOR THE PURPOSE OF INDICATING AND SIGNIFICANT CHANGES FROM THE NORMAL TRACINGS. THE RELEVANT AND CONTROL QUESTIONS WERE NUMERICALLY SCORED ACCORDING TO ACCEPTED POLYGRAPH STANDARDS.

COMMENTS:
MS BROYLES DENIED THAT SHE HAD INTENTIONLLY DID ANYTHING WITH THE BUNTIN FILE TO COVER UP A MISTAKE. SHE ADVISED THAT SHE HAD PROVIDED TRUTHFUL INFORMATION TO HER ATTORNEY.

THE FOLLOWING RELEVANT QUESTIONS WERE ASKED ON THE POLYGRAPH EXAMINATION:

REGARDING THE BUNTIN CASE DO YOU INTEND TO LIE TO ANY QUESTION ABOUT THAT?
ANSWER: NO

ARE YOU INTENTIONALLY WITHOLDING INFORMATION ABOUT THIS CASE?
ANSWER: NO

DID YOU FIND THE BUNTIN FILE IN THE "BUM" ROOM?
ANSWER: NO

DID YOU INTENTIONALLY HIDE THE BUNTIN FILE?
ANSWER: NO

CONCLUSION:

I CAREFULLY REVIEWED MRS. BROYLES'S POLYGRAPH TRACINGS. IT WAS DETERMINED THAT SHE FAILED TO DISPLAY REACTION CONSISTENT WITH DECEPTION TO THE ABOVE RELEVANT QUESTIONS. I SCORED THE CHARTS AS NON-DECEPTIVE.
END OF REPORT:

STEVEN R. SIMS
CERTIFIED POLYGRAPH EXAMINER
INDIANA LICENSE #213
MEMBER AMERICAN POLYGRAPH ASSOCIATION
MEMBER INDIANA POLYGRAPH ASSOCIATION
PAST PRESIDENT IPA 1987-1990
MARION COUNTY SHERIFF RETIRED 1970-1990