

**SUPREME COURT
OF BRITISH COLUMBIA
VANCOUVER REGISTRY**

MAR 17 2017



IN THE SUPREME COURT OF BRITISH COLUMBIA

No. S-172577
Vancouver Registry

BETWEEN

DEAN CHRISTOPHER ROBERTS

PETITIONER

AND

THE ATTORNEY GENERAL OF BRITISH COLUMBIA

APPLICANT

PETITION TO THE COURT

On Notice to:

The Attorney General of British Columbia

c/o Mark Levitz, Q.C.

Crown Law Division

6th Floor – 865 Hornby Street

Vancouver, B.C. V6Z 2G3

This proceeding is brought by the petitioner for the relief set out in Part 1 below.

If you intend to respond to this petition, you or your lawyer must

- (a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and
- (b) serve on the petitioner
 - (i) 2 copies of the filed response to petition, and
 - (ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.

Time for response to petition:

A response to petition must be filed and served on the petitioner,

- (a) If you were served with the petition anywhere in Canada, within 21 days after that service,
- (b) If you were served with the petition anywhere in the United States of America, within 35 days after that service,
- (c) If you were served with the petition anywhere else, within 49 days after that service, or
- (d) If the time for response has been set by order of the court, within that time.

(1)	The address of the registry is: 800 Smithe Street, Vancouver, B.C., V6Z 2E1
(2)	<p>The ADDRESS FOR SERVICE of the petitioner is:</p> <p>610-744 West Hastings Street Vancouver, B.C. V6C 1A5</p> <p>Fax number address for service of the petitioner is: (604) 669-0616</p>
(3)	<p>The name and office address of the petitioner's lawyer is:</p> <p>Jeffrey T. Campbell, Q.C. Peck and Company Barristers 610-744 West Hastings Street Vancouver, B.C. V6C 1A5</p>

CLAIM OF THE PETITIONER

Part 1: ORDERS SOUGHT

1. An order that the Crown make the following exhibits and evidence available for DNA testing:
 - a. cigarette butt found near Josiah Roberts;
 - b. hair and fibre samples found on Josiah Roberts (police exhibits C5 and C6);
 - c. right fingernail clippings seized from Susan Roberts (police exhibit A9);
 - d. left fingernail clippings seized from Susan Roberts (police exhibit A10);
 - e. rope seized from the neck of Josiah Roberts (trial exhibit 15);
 - f. rope seized from the neck of Susan Roberts (trial exhibit 14);
 - g. purple bag (trial exhibit 2);
 - h. plastic bags found near Josiah Robert's body; and
 - i. the complete RCMP biology case file, including but not limited to all examination notes, photographs, communication logs, DNA results, and DNA quantification data.

Part 2: FACTUAL BASIS

1. The Petitioner's wife, Susan Roberts, and his sons, Josiah Roberts and David Roberts, were murdered on July 18, 1994, in Cranbrook, B.C.
2. The Petitioner was arrested on September 24, 1994, as a result of an undercover "Mr. Big" operation carried out by the RCMP. The Petitioner was subsequently charged with three counts of first-degree murder and one count of attempted murder.
3. During the police investigation in 1994 and 1995, the following materials were tested for DNA evidence:
 - a. Fingernail clippings taken from Susan Roberts' hands; and
 - b. The purple bag the police believed was used to transport Josiah Roberts.
4. Only one set of the fingernail clippings taken from Susan Roberts yielded human DNA of sufficient quality and quantity for DNA testing. The DNA extracted did not match the Petitioner.
5. No human DNA was found in the sample taken from the purple bag.
6. It appears that the following items were not tested for DNA:

- a. Plastic bags found within the purple bag;
 - b. A cigarette butt found near Josiah Roberts' body; and
 - c. The ropes used to strangle Susan and Josiah Roberts.
7. Additionally, it does not appear that the handles of the purple bag were tested for DNA.
8. The Petitioner's trial was held in the Supreme Court of British Columbia in Nelson, B.C., from September 11, 1995, to November 2, 1995, before the Honourable Mr. Justice Stewart and a jury.
9. The evidence implicating the Petitioner was primarily based on his confession during the "Mr. Big" operation. There was no physical or forensic evidence implicating the Petitioner in the offences.
10. On November 2, 1995, the Petitioner was convicted of three counts of first degree murder and one count of attempted murder. He was sentenced to life imprisonment, without parole eligibility for 25 years.
11. The Petitioner's conviction appeals were heard on March 11, 1997. The appeals were dismissed on April 2, 1997.
12. The Petitioner did not apply for leave to appeal to the Supreme Court of Canada within the prescribed time.
13. The Petitioner has consistently maintained his innocence.
14. The Petitioner intends to make an application for ministerial review on the grounds of miscarriage of justice, pursuant to s. 696.1 of the *Criminal Code*. This application requires the Petitioner to present fresh, exculpatory evidence.
15. Modern DNA testing of the exhibits and evidence sought in this petition may reveal exonerating evidence, or at least assist in further investigating the Petitioner's innocence claim.
16. The Applicant has requested that the Crown release some of the exhibits and evidence sought in this petition for DNA testing. The Crown has denied these requests.

Part 3: LEGAL BASIS

Sections 7 and 24(1) of the *Charter*

1. Section 7 and 11(d) of the *Charter* require full and timely disclosure by the Crown: *R. v. Stinchcombe*, [1991] 3 S.C.R. 326.
2. The Crown's failure to meet its disclosure obligations results in a breach of the accused's *Charter* rights and entitles an accused to a remedy under s. 24(1) of the *Charter*.
3. The Crown's disclosure obligations continue after conviction in the appellate context and

the post-appeal context: *R. v. Trotta* (2004), 23 C.R. (6th) 261; *Chaudhary v. Canada (Attorney General)*, 2012 ONSC 5023.

4. The Crown's failure to meet its disclosure obligations in this case resulted in a breach of the Petitioner's s. 7 *Charter* rights.
5. The Petitioner seeks disclosure as a remedy under s. 24(1) of the *Charter*.

Sections 696.1-696.6 of the *Criminal Code*

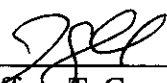
6. Sections 696.1-696.6 provide for a ministerial review of a conviction on the grounds of a miscarriage of justice after all avenues of appeal and judicial review have been exhausted. The broad objective of this post-conviction review scheme is to correct wrongful convictions.
7. An application for ministerial review under ss. 696.1-696.6 of the *Criminal Code* requires new, exculpatory evidence. To present new, exculpatory evidence, the applicant often requires access to the investigative file and access to exhibits to conduct fresh forensic tests.
8. However, the post-conviction review regime does not establish a process for the disclosure of materials in the possession of the Crown and police. This is a legislative gap.
9. A purposeful interpretation of the post-conviction review provisions supports the imposition of a Crown post-appeal disclosure obligation. It also supports the granting of discretion to the B.C. Supreme Court to make disclosure orders and orders for the release of exhibits for forensic testing. This power necessarily flows from the broad objective of the post-conviction review scheme to correct wrongful convictions.

Part 4: MATERIAL TO BE RELIED ON

1. the Affidavit of Warren Woodhurst;
2. the Affidavit of Tamara Levy;
3. the Affidavit of Courtney McKewan;
4. the Affidavit of Tony Paisana;
5. written submissions of counsel; and
6. other material as counsel may advise and that the Honourable Court may permit.

The petitioner estimates that the application will take 2 days.

Dated at Vancouver, B.C. this 3rd day of March, 2017.



Jeffrey T. Campbell, Q.C.
Counsel for the Petitioner