

HJ 23 – PH 3-12-14

On Monday, March 31, 2014 2:52 PM, Chandra Bozelko  
I was incarcerated on March 12, 2014 when the hearing was held on this claim and I was not transported to the General Assembly to testify in person. Please publish this and consider it with the appeal of the claim.

HJ 23 - Written Testimony by Claimant Chandra Bozelko for Claim 22464

#### WRITTEN TESTIMONY:

Thank you for the opportunity to present my case.

The Judiciary Committee should allow the instant claim to proceed to suit because it presents issues of law and fact that would subject a private person to liability in similar circumstances. The only just and equitable ruling on this claim is to allow it to proceed to suit.

#### FACTS

These facts were presented in the claim and are re-presented for context of this testimony.

On October 9, 2007, after the verdict in State v. Chandra Bozelko, sentencing was scheduled for December 7, 2007.

On November 15, 2007, upon receiving notice that she should report to the Office of Adult Probation in Milford on November 19, 2007 for a Pre-Sentence Investigation Interview (“Interview”) Claimant wrote a letter to Adult Probation Officer Lisa Gerald (“Gerald”) the following: *“I am looking for new defense counsel and I have been advised that I should not be interviewed without counsel present...I am not refusing to participate in a pre-sentencing investigation, but I believe I need counsel present for the interview.”* This letter was included with the claim as Exhibit A.

Also on November 15, 2007, Gerald unilaterally continued the sentencing date and assured Claimant that she was not proceeding without the Interview when she faxed a letter to Claimant's home that stated: *“We understand that you are not refusing to participate in the pre-sentence investigation interview. It is in the best interest of all parties that our office proceed with this matter when issues pertaining to counsel have been resolved and appearances are filed... you are instructed to report to Court as scheduled on December 7, 2007 as directed by [Judge] Cronan. We will anticipate further instruction from the Court.”* This letter was included with the claim as Exhibit B.

Gerald then proceeded to conduct the Pre-Sentence Investigation without Claimant’s Interview or input and represented in the Pre-Sentence Investigation Report that Claimant refused to participate in the Interview. When Claimant appeared on December 7, 2007 pursuant to Gerald’s instruction in her November 15, 2007 letter, the

judge used Gerald's misrepresentation that Claimant refused to participate against Claimant to enhance her sentence to five years imprisonment.

## REASONS FOR GRANTING THE CLAIM

Gerald exceeded her statutory authority as a probation officer under C.G.S. § 54-91a (a) – (c) when she unilaterally continued Claimant's sentencing date - at least to Claimant - in contradiction to a court order.

Claimant relied upon Gerald's representation that she would not proceed with the Pre-Sentence Investigation until further instruction from the court on December 7, 2007 because it is inconceivable that a probation officer would make a decision about a defendant's sentencing without first conferring with the court.

But Gerald never conferred with the court before she made this intentional misrepresentation. In doing so, she exceeded her statutory authority. When a state employee exceeds her statutory authority, the doctrine of sovereign immunity no longer prevents liability for her actions.

Further, the misrepresentation in the Pre-Sentence Investigation Report that Claimant refused to participate in the Interview incurs liability because such behavior fits squarely into the exception to sovereign immunity as established in Shay v. Rossi, 253 Conn. 134 (2000) by the Connecticut Supreme Court. Concisely stated, the Shay Court held that when a state employee exceeds her statutory authority in one specific instance, she also exceeds her statutory authority in every subsequent action taken to cover up the unlawful conduct. When Gerald told Claimant that sentencing had been continued, she exceeded her authority; lying about Claimant's participation in the Interview is also an instance of exceeding her authority because Gerald was covering for the fact that she had rescheduled Claimant's Interview without authority. Gerald deserves no protection from sovereign immunity for this behavior.

In sentencing in criminal cases, because the defendant risks losing her liberty (as Claimant did) truthfulness on the part of state actors is of the utmost importance.

There is no question that C.G.S. § 4-160 authorizes you to approve this claim. You must ask yourself if it is ethical to allow probation officers to corrupt the sentencing process through dishonesty and overconfidence. Then ask yourself: "How would I feel if a probation officer deceived me into missing a chance to reduce my sentence and then lied about it to the court?" That is exactly what happened here. You wouldn't hold the state harmless then, would you?

Thank you for your attention.