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Thorne
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standard was lowered in July to “preponderance of the evidence,” which means there is more than a 50% chance the evidence is true.)

It’s exceptionally rare for the court to vacate someone’s convictions.

Since July 2004, the state Court of Appeals has received 392 actual innocence petitions, according to Cindi McCoy, the court’s clerk.

In those 16 years, only eight, including Esther’s, have been granted. (Thirteen others remain pending.)

One day in April, it was finally time for a three-judge panel to hear Esther’s case. While hearings typically happen in person, hers was held by phone because of the coronavirus pandemic.

Chapman and the state Attorney General’s Office, which opposed Esther’s petition, each had 15 minutes to make their case.

Based on Martin’s findings, Assistant Attorney General Alphonso Simon didn’t challenge the teen’s recantation. But Esther and her lawyer had to prove certain legal elements. The child told relatives he lied before the trial, he said.

“The commonwealth just questions ... if Ms. Thorne has established by clear and convincing evidence that the information was ... unavailable to her and could not have been discovered with exercise of due diligence,” Simon said.

(Through a department spokesman, Simon declined to be interviewed for this story. The Norfolk Commonwealth’s Attorney’s Office, which originally prosecuted the case, also declined to comment, saying it would be inappropriate because Esther’s record has since been expunged.)

Chapman told the judges the family was a divided one. They didn’t get together and discuss what was happening. For that reason, he argued, Esther couldn’t have known the child admitted to lying. The whole case was based on the boy’s testimony, he said.

“There is no gray area in this at all. It did not happen. This recantation by this one witness pulls the rug out from under the entire prosecution,” Chapman said. “We often brag about our justice system and that it’s the best one in the world. And there’s always a little caveat, footnote, to that, that



Esther Thorne holds her great-grandson, Keyvon Copeland Jr., as her daughter, Shawnda Thorne, tries to make him smile in Portsmouth in October. Esther was released from prison in time to be home for the birth of her first great-grandchild. KRISTEN ZEIS/STAFF

“There is no gray area in this at all. It did not happen. This recantation by this one witness pulls the rug out from under the entire prosecution.”

— Attorney Nathan Chapman

it does have its flaws and occasionally things can go wrong. They did here, and thankfully the legislature has given this court the authority to review that.

“We’re asking that this court would grant Ms. Esther Thorne’s petition for a writ of actual innocence because she is, in fact, not guilty of the crimes for which she was convicted.”

Weeks later, on June 1, the judges had a decision.

The court clerk called Chapman, who called Shawnda. She broke the news to her mom: “Guess what? ... They granted

your writ of innocence, baby!”

In prison, Esther feared the other women might retaliate against her if they knew she was getting out.

So she told no one, and she waited.

One morning in early July, Esther was getting ready for a shower when someone called for her over the intercom.

When prison staffers found her, they asked: How would she like to go home that day?

Shawnda was already on her way.

“I broke down and started crying,” Esther said. “That’s all I could do.”

There were so many things she missed while she was away: birthdays, holidays, her granddaughter’s graduation.

But Esther was there in August to hold her great-grandson, born exactly one month after she was freed.

Since coming home, Esther has been living with Shawnda.

She cared for herself and managed her own finances before prison, but now, at 60, she’s starting over. Shawnda has been helping her reclaim all the benefits she lost when she got convicted.

Esther said she’s trying to regroup. For six years, prison guards controlled her life, telling her where she could go, what she could eat, when to sleep. Now, she’s adjusting to managing her own time, her own space.

“She has to get rehabilitated to the real world,” said Shawnda.

In prison, Esther didn’t plan for the future because there wasn’t hope for one. Now, there is.

The path forward isn’t always simple, but she’s not alone. Her daughter is always beside her.

The day Esther came home, Shawnda streamed a video live on Facebook from her phone.

Inside the car, she angled the camera toward her mom.

“Hey, everybody!” Esther waved.

Shawnda read her mom well-wishes from friends as they trickled in over social media.

It had been a long time, Shawnda said into the camera. And it was finally over.

“I didn’t give up,” she said.

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