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Inmate finally released

CONVICTION OVERTURNED AFTER MERCURY NEWS INVESTIGATION

By Fredric N. Tulskey
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State officials said late Wednesday they expected to release Michael Hutchinson within hours from prison, eight weeks after a federal judge overturned the Milpitas man's robbery conviction citing "persuasive independent evidence" uncovered by the Mercury News.

The impending release of Hutchinson, 39, came after his attorneys, frustrated by a series of delays, asked U.S. District Judge Jeffrey White to hold a state warden in contempt if Hutchinson were not released by the end of the day.

Even though his conviction was overturned June 22, Hutchinson's release has been hampered by a series of obstacles that his attorneys contended were "artificial hurdles" created by the prison system to delay freeing him.

The last of those hurdles was cleared Wednesday, when Santa Clara Superior Court Judge Jean High Wetenkamp filed an order clarifying that Hutchinson's sentence for a separate domestic violence charge had been fulfilled.

Officials said Hutchinson was being bused from a minimum security prison in Santa Cruz to a state prison in Susanville, 250 miles away. There, he was to be processed and released Wednesday night or this morning.

Neither Hutchinson nor his family could be reached.

Hutchinson was convicted in 2000 of being the masked intruder who burst into a Milpitas 7-Eleven in 1998, hopped the counter and took money from the cash register. His conviction was one of three highlighted by the Mercury News that have been overturned since the paper published its series "Tainted Trials, Stolen Justice," which documented widespread errors in Santa Clara County jury trials. Such errors increase the small chance of wrongful convictions.

A store clerk identified Hutchinson as the robber, though her testimony conflicted with her initial statement to police. Hutchinson, the only defense witness called by his trial lawyer, Dennis Kazubowski, testified he was somewhere else when the robbery occurred.

He was sentenced to 11 years in prison, and then entered a guilty plea to a separate domestic violence charge in return for an additional two-year sentence.

Before the 7-Eleven incident, Hutchinson had been in prison for assault with a deadly weapon. After his release, he became a pastor. A poster for his church, bearing his photograph, was displayed in the 7-Eleven before the robbery. An expert in eyewitness identification told the Mercury News that the photograph could have misled the clerk into a mistaken identification.

On appeal, Hutchinson's court-appointed lawyer, Robert Gehring, asked for money to hire an expert to show that the robber caught on camera was shorter than Hutchinson. But the 6th District Court denied the funds and rejected the appeal.

The case caught the attention of the Mercury News during its review of appellate cases and the newspaper hired Gregg Stutchman, a Napa forensics expert, to undertake the photographic examination the court refused to fund. Stutchman concluded that the height of the robber captured on film in a series of photographs as he burst through the door appeared to range from 5 feet to 5 feet 6 1/2 inches -- a range that he testified reflected different points in the robber's stride. Hutchinson, according to trial testimony, is 6 foot 1 or 6 foot 2.

Once Hutchinson turned to federal court, attorneys Lawrence A. Gibbs and Clifford Gardner took his case without charge, arguing that his constitutional rights had been violated by Kazubowski's failure to investigate the photographic evidence. After a June hearing in which Stutchman and Kazubowski testified, White overturned the verdict.

Days later, Hutchinson's lawyers first sought his release. The state countered that Hutchinson should remain locked up while prosecutors appealed.

But White on Aug. 1 ordered his release on \$20,000 bond, an amount that proved difficult for his family to immediately post. On Aug. 10, after contributions from several Mercury News readers, the family posted the bond.

Court papers show the prison was still not ready to release Hutchinson. Deputy Attorney General Bruce Ortega told the judge last week that the prison would accept only certified copies of the judge's ruling releasing Hutchinson from the judge himself. So White forwarded his order. This week, Ortega told the judge that prison officials now insisted Hutchinson had to be re-sentenced on the domestic violence charge before his release -- even though Ortega and the Santa Clara district attorney agreed Hutchinson had served far more time than the domestic violence charge would require.

That prompted defense attorneys Wednesday to seek a contempt order if prison officials continued to keep Hutchinson locked up. "The prison's position is utter nonsense," they said in court papers.

Ortega worked to rush the resentencing through Wednesday, resolving the final hurdle.

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